

NO. 17-2279

In the
**United States Court of Appeals
for the Eighth Circuit**

Anmarie Calgaro,

Plaintiff – Appellant,

v.

St. Louis County; Linnea Mirsch, individually and in her official capacity as Interim Director of St. Louis County Public Health and Human Services; Fairview Health Services, a Minnesota nonprofit corporation; Park Nicollet Health Services, a nonprofit corporation; St. Louis County School District; Michael Johnson, individually and in his official capacity as Principal of the Cherry School, St. Louis School District; and E.J.K.,

Defendants – Appellees.

BRIEF OF APPELLEE FAIRVIEW HEALTH SERVICES

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Summary of the Case and Request for Oral Argument

Appellee E.J.K. f.k.a. J.D.K. (“E.J.K.”) is an adult transgender woman. She moved out of her parent’s home and began managing her finances when she was 15 years old. Appellant Anmarie Calgaro is E.J.K.’s mother.

Appellant alleges that, when E.J.K. was 17 years old, E.J.K. obtained prescription medication from Fairview Health Services (“Fairview”), a private medical provider, pursuant to Minnesota’s minor medical consent statute, Minn. Stat. §§ 144.341–.347 (2016). Appellant sued Fairview under 42 U.S.C. § 1983, claiming that Fairview violated Appellant’s rights under the Due Process Clause of the Fourteenth Amendment by providing prescription medication on E.J.K.’s request and consent. Fairview moved to dismiss on the grounds that it is not a state actor.

Appellant’s apparent initial theory was that E.J.K.’s use of public funds to pay for medical services made Fairview a state actor. Appellant later pivoted to the theory that Fairview performed a public function by “adjudicating” E.J.K.’s “emancipation.” The District Court granted Fairview’s motion and dismissed Appellant’s claims with prejudice.

Fairview requests oral argument, and suggests 30 minutes be allotted for all appellees.

Corporate Disclosure Statement

Appellee Fairview Health Services hereby certifies and furnishes the following in compliance with Rule 26.1 of the Federal Rules of Appellate Procedure and 8th Cir. R. 26.1A: Appellee Fairview Health Services is a nonprofit corporation. Fairview Health Services does not have a corporate parent and no publicly-held corporation owns any equity in it.

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Jurisdictional Statement

Appellant sued Appellee Fairview Health Services (“Fairview”) under 42 U.S.C. § 1983 alleging that Fairview violated her rights under the Fourteenth Amendment. Appellant alleged that the District Court had subject-matter jurisdiction pursuant to 28 U.S.C. § 1331. The District Court held that Appellant failed to state a claim because Fairview is a private hospital, not a state actor, and therefore is not subject to the Fourteenth Amendment or to claims under 42 U.S.C. § 1983. Because Appellant asserted no other basis for the District Court’s subject-matter jurisdiction over the claims against Fairview, the District Court lacked subject-matter jurisdiction over those claims. Nevertheless, this Court has jurisdiction to review the District Court’s final order pursuant to 28 U.S.C. § 1291.

Statement of Issues

1. A claim under 42 U.S.C. § 1983 may only be brought against a party that may fairly be said to be a state actor. A healthcare provider does not become a state actor merely because it provides healthcare services consistent with state law. Did the District Court err in holding that Fairview was not a state actor when it allegedly provided E.J.K. with healthcare services?

Apposite Authorities:

Blum v. Yaretsky, 457 U.S. 991, 102 S. Ct. 2777 (1982)

Lubin v. Critterden Hosp. Ass'n, 713 F.2d 414 (8th Cir. 1983)

Minn. Stat. § 144.341 (2016)

2. An essential aspect of judicial and quasi-judicial adjudication is that it ends with a binding decision regarding the disputed claim. Fairview's alleged provision of healthcare services did not bind any person or court to accept that E.J.K. was an emancipated minor. Did the District Court err in holding that Fairview did not "adjudicate" E.J.K.'s "emancipation" in violation of Appellant's claimed Fourteenth Amendment rights by allegedly providing E.J.K. with healthcare services after E.J.K. gave effective medical consent to receive those services?

Apposite Authorities:

Flagg Bros., Inc. v. Brooks, 436 U.S. 149, 98 S. Ct. 1729 (1978)

U.S. v. Utah Const. & Min. Co., 384 U.S. 394, 86 S. Ct. 1545 (1966)

Minn. Ctr. for Env'tl. Advocacy v. Metro. Council, 587 N.W.2d 838 (Minn. 1999)

Minn. Stat. § 144.341 (2016)

3. Under Minnesota law, emancipation is the act of a parent relinquishing her rights and obligations to a minor child. Fairview is not E.J.K.'s parent. Did the District Court err in holding that Fairview did not "emancipate" E.J.K. in violation of Appellant's claimed Fourteenth Amendment rights by allegedly providing E.J.K. with healthcare services after E.J.K. gave effective medical consent to receive those services?

Apposite Authorities:

In re Fiihr, 289 Minn. 322, 184 N.W.2d 22 (1971)

Taubert v. Taubert, 103 Minn. 247, 114 N.W.763 (1908)

Minn. Stat. § 144.341 (2016)

Statement of the Case

I. Statement of Facts for Purposes of Fairview’s Motion to Dismiss.¹

Appellee E.J.K. is an adult transgender woman.² App.14, ¶ 3; App.27, ¶ 68. Appellant is E.J.K.’s biological mother. App.14, ¶ 3. E.J.K. resides on her own and has not resided with Appellant since early 2015. App.25, ¶ 53. E.J.K. resides in St. Louis County, Minnesota, and receives funding from the county to help support her living expenses. App.25, ¶ 54.

Fairview is a private nonprofit corporation organized under the laws of the State of Minnesota. App.12, ¶ 12. Fairview is alleged to have provided healthcare services to E.J.K. while she was a minor, at her request and with

¹ For purposes of this Court’s review of the District Court’s ruling on Fairview’s motion to dismiss, Fairview accepts the factual allegations in the Complaint as true. However, Fairview objects to the factual recitation in Appellant’s argumentative and poorly sourced statement of the case. Fed. R. App. P. 28(a)(6) requires “a concise statement of the case . . . with appropriate references to the record.” Appellant’s statement of the case does not comply with this requirement and contains allegations that are not found in the Complaint. For example, Appellant now alleges that Fairview treated E.J.K. based on its supposed decision to accept the “letter of emancipation.” App’t Br. 15. This differs materially from the allegation in the Complaint, which alleged that Fairview accepted E.J.K.’s ability to consent based on St. Louis County’s prior decision to provide E.J.K. with social services. App.38–39, ¶ 131; App.49–50, ¶ 198. It is too late for Appellant to alter the factual basis for her allegations, nor should the Court permit her to do so.

² Although E.J.K. was a minor when this case began, the birthdate alleged in the Complaint indicates that she has since become an adult. App.14, ¶ 3.

her consent. Specifically, Appellant alleged *only* that Fairview prescribed medication for E.J.K. App.34, ¶ 101. Appellant did not allege that Fairview assisted E.J.K.’s gender transition. *See id.*

Appellant alleged E.J.K. paid for Fairview’s healthcare services with medical assistance funds. App.34, ¶ 102. Appellant objects to Fairview providing E.J.K. healthcare services. App.37, ¶ 120.

Appellant sued Fairview pursuant to 42 U.S.C. § 1983, alleging that Fairview violated her rights under the Due Process Clause of the Fourteenth Amendment. App.44, ¶ 173. Appellant’s initial theory appeared to be that the healthcare services Fairview allegedly provided were paid for with medical assistance funds. *See, e.g.,* App.49–.50, ¶ 198 (alleging that “Fairview’s determination of emancipation without a court order was based upon the government’s willingness to pay for the medical services”). Appellant sought injunctive relief and a declaration that Fairview violated her rights under the Due Process Clause of the Fourteenth Amendment. *Id.*

Fairview moved to dismiss the claims against it because the mere acceptance of public funds does not convert the provision of healthcare services by a private party into a state action. In response, Appellant pivoted to an argument that Fairview was a state actor because it had exercised

delegated authority from the State of Minnesota to perform the traditional public function of “adjudicating” the “emancipation” of E.J.K., a theory that Appellant pursues in this appeal.³ See App’t Br. 36. The district court granted Fairview’s motion and dismissed the claims against it. App.71.

II. Statement of Facts for Purposes of Appellant’s Motion for Summary Judgment.

For purposes of this Court’s review of the denial of Appellant’s motion for summary judgment, there are no undisputed facts because Appellant failed to establish *any* facts with respect to Fairview. Appellant instead relied on her allegations in the so-called verified complaint. The allegations in the Complaint do not provide a basis for granting a motion for summary judgment. Fed. R. Civ. P. 56(c)(4). Appellant failed to meet her burden of supporting her factual positions. See Fed. R. Civ. P. 56(c)(1). Therefore, there were no facts before the District Court on which to grant summary judgment against Fairview.

³ *Amicus* The Foundation for Moral Law (“FML”) failed to notice this change in position, and states that Appellant did not argue that Fairview had performed a judicial act. FML Br. 6–7. But Appellant is actually arguing that Fairview performed a quasi-judicial act of emancipation. App’t Br. 36.

Summary of Argument

This case is about whether a private healthcare provider is liable under Section 1983 and the Due Process Clause of the Fourteenth Amendment by providing healthcare services to a private party consistent with the private party's effective medical consent. The answer is that there is no federal proscription against such conduct, and no liability under Section 1983.

The District Court correctly recognized that the facts do not raise a constitutional question and did not support a Section 1983 claim against Fairview. Section 1983 claims may only be asserted against a private party when that party may fairly be said to be a state actor. Fairview did not become a state actor merely because it accepted the effective medical consent E.J.K. provided pursuant to Minnesota's minor medical consent statute. Therefore, Fairview did not violate Section 1983 and there was no federal question or claim before the District Court.

Nevertheless, Appellant claims that Fairview "adjudicated" that E.J.K. was "emancipated" in violation of Appellant's rights under the Due Process Clause of the Fourteenth Amendment. But the decision to accept E.J.K.'s effective medical consent was not an "adjudication." Under both federal and Minnesota precedent, an "adjudication" requires a final determination that is

binding on subsequent judicial or quasi-judicial decision-makers. Fairview's provision of healthcare services would not have bound a subsequent judicial or quasi-judicial decision-maker to find that E.J.K. was emancipated, and therefore did not constitute an "adjudication."

Moreover, Appellant's claim is grounded on a faulty legal premise. Under Minnesota law, "emancipation" is an act of the parent relinquishing the parent's rights and obligations toward a child. Fairview is not E.J.K.'s parent, and therefore its act in providing healthcare services could not have "emancipated" E.J.K.

Instead, Fairview's alleged prescription of medication was lawful and proper. Even though E.J.K. was a minor when she allegedly received the services, the Minnesota minor medical consent statute (which codifies and supplements longstanding common law doctrine) permitted E.J.K. to give effective medical consent if she lived outside of her parents' homes and managed her own finances. Minn. Stat. § 144.341. Appellant alleged facts demonstrating E.J.K.'s ability to give effective medical consent under that statute.

In sum, Appellant failed to state a claim against Fairview. The District Court correctly dismissed the Section 1983 claim against Fairview because Appellant's claim against Fairview was based on multiple faulty premises.

Argument

I. Appellant Failed to State a Section 1983 Claim Against Fairview Because It Is Not a State Actor.

This Court reviews the dismissal of Appellant's 42 U.S.C. § 1983 claim de novo, and while doing so must accept the allegations in the Complaint as true and draw all inferences from it in favor of the nonmoving party.

Crumpley-Patterson v. Trinity Lutheran Hosp., 388 F.3d 588, 590 (8th Cir. 2004).

Congress has extended original federal-question jurisdiction to federal district courts in civil actions arising under federal statutes. 28 U.S.C. § 1331. Appellant alleged that the District Court could exercise federal-question jurisdiction over Fairview because 42 U.S.C. § 1983 provided her a remedy against a purported violation of her rights under the Due Process Clause of the Fourteenth Amendment. App.14, ¶ 1. The District Court correctly held that Appellant did not have such a remedy against Fairview because it is not a state actor.

The Due Process Clause of the Fourteenth Amendment provides that “[n]o state shall . . . deprive any person of life, liberty, or property, without due process of law.” U.S. CONST. amend. XIV, § 2. The Due Process Clause only regulates conduct that “may fairly be said to be that of the States” and “erects no shield against merely private conduct.” *Blum v. Yaretsky*, 457 U.S. 991, 1003, 102 S. Ct. 2777, 2785 (1982).

Likewise, it is well-established that Section 1983 does not extend to merely private conduct. *Am. Mfgs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 49–50, 119 S. Ct. 977, 985 (1999). Section 1983 provides that

[a]ny person who, under color of any statute, ordinance, regulation, custom, or usage of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress

42 U.S.C. § 1983.

In order to establish a claim under Section 1983, a plaintiff must show (1) that she was deprived of a right secured by the Constitution or laws of the United States, and (2) that the alleged deprivation was committed under the color of state law. *Id.* at 49–50, 119 S. Ct. at 985. Proof that the deprivation

occurred under color of state law requires a showing that both (a) the deprivation was caused by the exercise of a right or privilege created under state law, and (b) that “the party charged with the deprivation must be a person who may fairly be said to be a state actor.” *Am. Mfrgs. Mut. Ins. Co.*, 526 U.S. at 50, 119 S. Ct. at 985 (quotation omitted).

In this case, the District Court properly held that Fairview was not a state actor simply by prescribing medication to E.J.K. For a private entity such as Fairview to have its acts converted into state actions, there must be a sufficiently close nexus between the State and the private entity, as evidenced by the State’s exercise of coercive power or “such significant encouragement” that the decisions of the private actor must be deemed to be those of the State itself rather than the private actor. *Id.* at 52, 119 S. Ct. at 986. Acts of a private entity that are taken with “the mere approval or acquiescence of the State” are not state actions and do not convert a private entity into a state actor. *Id.* at 52, 119 S. Ct. at 986.

It is well-established that “if the action of [a healthcare provider] was a purely private action, then section 1983 affords no basis for federal jurisdiction” and such a claim is “properly dismissed for lack of subject matter jurisdiction.” *Lubin v. Critterden Hosp. Ass’n*, 713 F.2d 414, 415 (8th

Cir. 1983); accord *Alexander v. Pathfinder, Inc.*, 189 F.3d 735, 740 (8th Cir. 1999); *Parisier v. Christian Health Care Sys., Inc.*, 816 F.2d 1248, 1252 (8th Cir. 1987); *Hayden v. Bracy*, 744 F.2d 1338, 1342 (8th Cir. 1984); *Hoyt v. St. Mary's Rehabilitation Ctr.*, 711 F.2d 864, 865–67 (8th Cir. 1983); *Briscoe v. Bock*, 540 F.2d 392, 395–96 (8th Cir. 1976).

The District Court held correctly, as a matter of law, there is no nexus between Fairview's private conduct and any state mandate or action. Accordingly, the District Court properly dismissed Appellant's claim.

A. Fairview Cannot Fairly Be Said to Be a State Actor Merely Because Fairview is Regulated by the State or because E.J.K. Receives Government Medical Assistance Benefits.

In her complaint, Appellant suggested that Fairview should be regarded as a state actor because it is regulated by the state and because E.J.K. allegedly paid for her medical services with governmental medical assistance benefits. App. 17–18, ¶¶ 12–13; App.49–.50, ¶ 198. As a matter of law, the mere fact that a private healthcare provider is extensively regulated by the state and receives state or federal funding for the services that it provides is simply not enough to establish the required nexus to convert the private provider's acts into state acts. *Alexander*, 189 F.3d at 740; *Lubin*, 713 F.2d at 415–16; *Briscoe*, 540 F.2d at 394, 396.

Simply put,

[m]any decisions in our society, right or wrong, simply must be left to the good judgment and discretion of private individuals, including physicians and other professionals, subject to whatever statutes or regulations may validly be issued by one or another level of government.

Hoyt, 711 F.2d at 866–67.

For example, in *Blum*, a group of nursing-home patients brought a Section 1983 claim related to their physicians’ periodic determinations as to whether the services provided to the patients remained “medically necessary” for purposes of Medicaid reimbursement. 457 U.S. at 994, 102 S. Ct. at 2781. If the physicians determined that the services were no longer “medically necessary,” then the patient was discharged from the nursing home or transferred to a facility providing a lesser degree of care. *Id.* at 994, 102 S. Ct. at 2781. The patients were not provided with notice or a hearing before the physicians made their determinations. *Id.* at 1003, 102 S. Ct. at 2785. *Blum* considered whether the physicians’ determinations constituted state acts, such that the lack of notice and a hearing would constitute a violation of the patients’ due-process rights. *Id.* at 1003, 102 S. Ct. at 2785.

In finding that no violation occurred, the Supreme Court reasoned that “the decision to discharge or transfer a patient originates not with state

officials, but with the nursing homes that are privately owned and operated.” *Id.* at 1003, 102 S. Ct. at 2785. The fact that Medicaid payments were adjusted or discontinued “in response to a decision to discharge or transfer a patient does not constitute approval or enforcement of that decision.” *Id.* at 1005, 1010, 102 S. Ct. at 2786, 2789. Because no state action was involved, the patients’ due-process rights were not violated and their Section 1983 claim failed. *Id.* at 1012, 102 S. Ct. at 2790.

This Court reached a like decision in *Alexander*, which involved a patient who was discharged from a group home because his medical problems had become so severe that the facility was no longer able to adequately care for him. 189 F.3d at 738–39. This Court determined that the decision to discharge the patient was not subject to a Section 1983 suit because the facility that made the decision was “a private corporation and the fact that it receives Medicaid funds does not convert it into a state actor.” *Id.* at 740 (citing *Blum*, 457 U.S. at 1002–12, 102 S. Ct. at 2785–86). Similarly, in *Hoyt*, the plaintiff sought to use Section 1983 as a vehicle to challenge the a physician’s decisions as to the care and treatment provided to a patient. 711 F.2d at 865. This Court rejected the invitation, stating that it would not

adopt a rule that subjected every medical decision to constitutional review.

Id.

The same reasons warranted dismissal of the claims against Fairview. Fairview is a private nonprofit corporation. App.17, ¶ 12. As such, its decisions are not state acts unless they are compelled by a state mandate. The mere fact that the decision may result in the payment of public funds to Fairview based on a patient's receipt of medical assistance would not alter the character of the decision when it is made. *Blum*, 457 U.S. at 1005, 1010, 102 S. Ct. at 2786, 2789. Nor does the fact that the decision was to *provide*, rather than to *terminate*, medical care imbue the decision with a constitutional component it would not otherwise have. *See id.* at 1005–06, 102 S. Ct. at 2786–87 (describing the process for making the initial determination that treatment was medically necessary, and noting that “the physicians, and not the forms, make the decision about whether the patient’s care is medically necessary”).

Ultimately, this Court must focus on the particular conduct that is being challenged. *Am. Mfgs. Mut. Ins. Co.*, 526 U.S. at 51, 119 S. Ct. at 985. Here, Appellant attempted to challenge Fairview’s alleged provision of healthcare services to E.J.K. at her request, but without Appellant’s consent.

App.34, .37, ¶¶ 101, 120. Fairview allegedly provided services pursuant to Minnesota's minor medical consent statute, which permits a minor to "give effective consent to personal, medical, dental, mental and other health services," and notes that "the consent of no other person is required," when the minor (1) "is living separate and apart from parents or legal guardians," without regard to the consent of the parent or the duration of the independent residence, and (2) "is managing personal financial affairs, regardless of the source or extent of the minor's income." Minn. Stat. § 144.341. The Complaint alleged facts establishing that E.J.K. met both of these requirements. App.25, ¶¶ 53-54. Thus, E.J.K. could provide effective consent to receive medical services.

The statute permits the person providing the medical services to rely in good faith on the minor patient's representation that these legal requirements are satisfied. Minn. Stat. § 144.345. Further, the statute permits the medical provider to exercise the provider's independent professional judgment as to whether the minor's parents need to be informed of the treatments. Minn. Stat. § 144.346.

These provisions afford significant discretion to the medical provider. First, nothing in the statute *requires* the medical provider to accept the

minor as a patient or to provide any treatment. That decision is a voluntary decision by a private medical provider. Second, the statute extends to the medical provider the discretion to weigh the minor's representations and to consider whether parental notice is necessary. Section 144.345 does not require the provider to accept the minor's representations, nor does Section 144.346 require the provider to withhold information from a parent. These decisions are left to the provider's judgment. The state does not control the exercise of that judgment.

As a consequence, Fairview's decision to treat E.J.K. is not mandated by the minor medical consent statute, but is instead the decision of a private party, not a state actor. *See Am. Mfgs. Mut. Ins. Co.*, 526 U.S. at 52–54, 119 S. Ct. at 986–87. As the act of a private party, the treatment being provided is not subject to the Fourteenth Amendment or to a Section 1983 claim. Instead, “[a]ction taken by private entities with the mere approval or acquiescence of the State is not state action.” *Id.* at 52, 119 S. Ct. at 986. “Private use of state-sanctioned private remedies or procedures does not rise to the level of state action.” *Tulsa Professional Collection Servs., Inc. v. Pope*, 485 U.S. 478, 485, 108 S. Ct. 1340, 1345 (1988).

The District Court correctly determined that Fairview did not become a state actor by prescribing medication to E.J.K. with her effective medical consent. This Court should affirm the dismissal of the claims against Fairview.

B. E.J.K. and Fairview’s Alleged Invocation of Statutory Rights and Procedures Is Not an “Adjudication.”

Appellant argues that Fairview is a state actor because it allegedly exercised delegated state authority to quasi-judicially adjudicate E.J.K.’s emancipation. That claim is meritless because a medical provider’s determination that a patient has provided effective and lawful medical consent is not an “adjudication.”

“Adjudication” is the conclusive determination by a decision maker, generally a court of competent jurisdiction, as to the existence of the rights or injuries put in issue by the parties to the dispute. *See* 1 HENRY CAMPBELL BLACK, A TREATISE ON THE LAW OF JUDGMENTS § 1, at 2 (2d ed. 1902), *quoted in* BLACK’S LAW DICTIONARY 858 (8th ed. 2004) (defining “Judgment”); *cf. S. Pac. R. Co. v. U.S.*, 168 U.S. 1, 48–49, 18 S. Ct. 18, 27 (1897) (explaining that the conclusiveness of judgments on the facts and claims put in issue is “the very object for which civil courts have been established” because litigants would not seek adjudication of rights from a forum that had no power to finally

settle the rights). As a consequence, one of the defining characteristics of a quasi-judicial proceeding, both under federal and Minnesota law, is that it is binding on the parties and establishes *res judicata*. *U.S. v. Utah Const. & Min. Co.*, 384 U.S. 394, 422, 86 S. Ct. 1545, 1560 (1966); *McKee v. Ramsey Cnty.*, 310 Minn. 192, 194 n.1, 245 N.W.2d 460, 462 n.1 (1976); *see also Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 160, 98 S. Ct. 1729, 1735 (1978) (noting the sovereign role in dispute resolution, albeit recognizing that the role is not exclusive).⁴

Whether a proceeding is quasi-judicial such that it can enjoy preclusive effect turns on the procedures used in arriving at the decision.

⁴ Nevertheless, if Appellant is correct that Fairview acted in a quasi-judicial capacity, then Fairview would be entitled to absolute immunity in its performance of a quasi-judicial function. *Butz v. Economou*, 438 U.S. 478, 512–16, 98 S. Ct. 2894, 2913–16 (1978); *Dunham v. Wadley*, 195 F.3d 1007, 1010 (8th Cir. 1999). Appellant’s remedy would instead lie in seeking review from the quasi-judicial decision, which—assuming *arguendo* that Fairview acted quasi-judicially—would be through petitioning the Minnesota Supreme Court for a writ of certiorari. *See Cnty. of Washington v. City of Oak Park Heights*, 818 N.W.2d 533, 539–40 (Minn. 2012) (stating that in the absence of other law, review of quasi-judicial decisions is obtained through petition for a writ of certiorari); Minn. Stat. § 480.04 (2016) (conferring on Minnesota Supreme Court jurisdiction to issue writs of certiorari “to all corporations and individuals”); *see also Tipka v. Lincoln Int’l Charter Sch.*, 864 N.W.2d 371, 373, 375 (Minn. App. 2015) (noting that the Minnesota Court of Appeals’ certiorari jurisdiction is limited to “public corporations” and does not extend to private nonprofit corporations such as charter schools). Appellant has not sought review by writ of certiorari from the Minnesota Supreme Court.

Johnson v. Vilsack, 833 F.3d 948, 953–54 (8th Cir. 2016). In order for a decision to be given preclusive effect, it must be made by one “acting in a judicial capacity.” *Id.* Whether the action is made in a judicial capacity turns on “the relative adequacy” of the procedures that are provided. *Id.* Adequate procedures would include protections such as notice, an opportunity to be heard, the application of facts to a standard of decision, and the rendering of a final decision terminating the proceeding. *See* Restatement (Second) of Judgments § 83 (1982), *cited in Johnson*, 833 F.3d at 954. In Minnesota, a quasi-judicial proceeding has three essential characteristics:

“(1) investigation into a disputed claim and weighing of evidentiary facts; (2) application of those facts to a prescribed standard; and (3) a binding decision regarding the disputed claim.” *Minn. Ctr. for Env'tl. Advocacy v. Metro. Council*, 587 N.W.2d 838, 842 (Minn. 1999).

Whether a decision is entitled to res judicata effect depends, in part, “upon the stature of the court and the nature of proceedings before it.” *Gollner v. Cram*, 258 Minn. 8, 13, 102 N.W.2d 521, 525 (1960). Thus, if the processes and procedures used in a tribunal or quasi-judicial hearing are insufficient to fully protect the rights of the claimant, then the claimant has not had a full and fair opportunity to be heard and the decision is not res

judicata. See *Clapper v. Budget Oil Co.*, 437 N.W.2d 722, 726 (Minn. App. 1989) (holding that insufficient procedural guarantees prevented granting res judicata effect to unemployment compensation decisions). As a result, it is the very absence of the procedures Appellant now seeks to impose upon healthcare providers through this action that demonstrates why Fairview's alleged provision of healthcare services was not a quasi-judicial adjudication.

Fairview did not exercise a traditional public function or become a state actor merely by following the minor medical consent statute. In *Flagg Bros., Inc.*, the Supreme Court specifically rejected the argument that reliance on state statutes providing limited immunity to common law liability constitutes a delegation of the traditional sovereign function of adjudication. 436 U.S. at 161–63, 98 S. Ct. at 1736–37. The Supreme Court considered whether a warehouseman's invocation of the self-help remedy under the Uniform Commercial Code that permitted it to sell a debtor's goods to collect on a debt “delegated to the warehouseman a portion of [the State's] sovereign monopoly power over binding conflict resolution.” *Id.* at 155, 98 S. Ct. at 1732–33 (quoting *Flagg Bros., Inc. v. Brooks*, 553 F.2d 764, 771 (2d Cir. 1977), *rev'd* 436 U.S. 149 (1978)). The Supreme Court noted that the statute did not exclude other remedies and did not bar the debtors' access to

state courts in the case of misuse. *Id.* at 160, 98 S. Ct. at 1735. In rejecting an argument for state action, the Court reasoned that “[t]his system of rights and remedies, recognizing the traditional place of private arrangements in ordering relationships in the commercial world, can hardly be said to have delegated to Flagg Brothers an exclusive prerogative of the sovereign.” *Id.* at 160, 98 S. Ct. at 1735.

Assuming that Fairview erroneously concluded that it could lawfully provide healthcare services pursuant to the minor medical consent statute, Fairview’s conclusion would not be binding on Appellant, on E.J.K., or on a Minnesota state court. Nor would E.J.K.’s alleged receipt of prescription medication from Fairview require another healthcare provider to render healthcare services to her.

Indeed, the possibility of a court action is implied by the statute, which requires a Minnesota state court to consider a healthcare provider’s “good faith” in the event a minor does not meet the statutory prerequisites. *See* Minn. Stat. § 144.345 (2016). If the healthcare provider’s acceptance of the minor’s representations conclusively terminated parental rights, then a court would not have an occasion to review the provider’s “good faith.” Appellant’s suggestion that the statute provides healthcare providers with “immunity”

for its decisions is inaccurate and overstates the effect of the statute. *Cf.* App't Br. 48.

In sum, Appellant complains that a private party (who had no relationship with her and who owed her no duties) did not provide her with notice before allegedly invading her rights as E.J.K.'s parent. However, Section § 1983 does not extend to merely private conduct. *Am. Mfgs. Mut. Ins. Co.*, 526 U.S. at 49–50, 119 S. Ct. at 985. This dispute is before the present Court merely because Appellant chose to institute her claim in a federal forum on an untenable constitutional theory.

It is not the case, as Appellant argues, that Fairview made a determination that E.J.K. did not need parental consent to seek health care services. App't Br. 31, 36. Rather, that determination was a legitimate determination the Minnesota Legislature made 46 years ago when it enacted the minor medical consent statute. The District Court properly held that Appellant failed to state a claim against Fairview under Section 1983. This Court should affirm.

II. The Argument that Fairview Deprived Appellant of Her Substantive Due Process Parental Rights Is Based on a Legally Incorrect Premise Because Fairview Did Not Emancipate E.J.K.

Even if Fairview could be considered a state actor, Appellant's Section 1983 claim would fail because her Due Process Rights under the Fourteenth Amendment were not violated.

Appellant is suing Fairview for allegedly providing medical services to E.J.K. without Appellant's consent while E.J.K. was still a minor. Appellant's claim is not grounded in state law, but instead asserts an alleged violation of her substantive and procedural due process rights as a parent. *See* App't Br. 17 (citing *Troxel v. Glanville*, 530 U.S. 57, 65, 120 S. Ct. 2054, 2059–60 (2000) (plurality opinion) (stating that the parental liberty interest, such as it is, arises under the substantive component of the Due Process Clause of the Fourteenth Amendment)). To the extent that Appellant claims an actual violation of her substantive and procedural due process rights, Appellant has no compensable injury under Section 1983 unless she can show (1) that her federal rights were violated, and (2) that the violation was unjustified. *See Carey v. Piphus*, 435 U.S. 247, 263, 98 S. Ct. 1042, 1052 (1978) (“[T]he injury caused by a justified deprivation . . . is not properly compensable under § 1983.”). She cannot do so because Fairview is simply alleged to have

provided healthcare services to a patient consistent with the patient's effective medical consent. Such conduct is not unconstitutional.

Appellant contends that Fairview "emancipated" E.J.K. by providing her with medical services when she was a minor. That is doctrinally incorrect because, under Minnesota law, emancipation is an act of the parent releasing the parent's rights and responsibilities over a minor. Fairview could not and did not emancipate E.J.K.

At common law, infancy is a "disability" that imposes "limitations on the legal capacity of infants, not for the defeat of their rights, but to shield and protect them from the acts of their own improvidence, as well as from the acts of others." *In re Davidson's Will*, 223 Minn. 268, 272, 26 N.W.2d 223, 225 (1947). Achieving the age of majority removes such disabilities. *Id.* at 272, 26 N.W.2d at 225. But there is nothing immutable about the age of majority or any other circumstances that would remove such disabilities. THE INFANTS LAWYER 44-45 (photo. reprint Lawbook Exch. 2007) (2d ed. 1712) (stating that the age of majority was set by the law of the land, not by the law of nature). Instead, the legislative power may be used to modify when such disabilities are wholly or partially removed. *In re Davidson's Will*, 223 Minn. at 275, 26 N.W.2d at 227 (Minnesota Legislature); accord *Morrissey v. Perry*, 137 U.S.

157, 159, 11 S. Ct. 57, 57 (1890) (Congress). “In short, Majority or Minority is a Status and not a fixed or vested right.” *In re Davidson’s Will*, 223 Minn. at 272, 26 N.W.2d at 225.

Emancipation, likewise, is a status affecting the disabilities of a minor and is not a granting or rescinding of vested rights by a court. It is part of the Minnesota common law, even though under English common law a parent was not able to unilaterally emancipate a minor child.⁵ *Lufkin v. Harvey*, 131

⁵ Nevertheless, emancipation was an important concept in pre-Revolutionary English statutory law regarding whether the “settlement,” i.e. domicile, of an indigent minor for purposes of social services differed from the parent’s. *See, e.g., Rex v. Inhabitants of Roach*, 6 T.R. 247, 252–54, 101 ER 536, 538–39 (K.B. 1795) (Kenyon, C.J.) (addressing emancipation for purposes of the Poor Relief Act of 1662, 14 Car. 2, c. 12), *cited by Lufkin*, 131 Minn. at 240, 154 N.W. at 1098. But English law determined emancipation based on the acts of the minor after departing from the parent’s home, rather than the acts of the parent. *Id.*

Minnesota had a similar poor-relief statute from territorial times until the 1970s, at which point the statutes governing poor relief were substantially revised. *See generally* Minn. Stat. § 261.07 (1971); Minn. Terr. Stat. ch. 16, at 121–22 (1851). Minnesota’s received common law incorporates statutory modifications to the common law passed before the Revolution—subject to subsequent modifications by the Minnesota Legislature or subsequent decisions of the Minnesota Supreme Court. *Dahlin v. Kroenig*, 784 N.W.2d 406, 409 (Minn. App. 2010), *aff’d*, 796 N.W.2d 503 (Minn. 2011). The Minnesota Supreme Court did, in fact, rely on the English construction of English poor relief laws as “common law” when construing Minnesota’s poor relief statute. *E.g., City of Willmar v. Village of Spicer*, 129 Minn. 395, 398, 152 N.W. 767, 768 (1915) (quoting 1 WILLIAM BLACKSTONE, COMMENTARIES *363 to construe the Minnesota poor relief act). Therefore, the doctrine of

Minn. 238, 240-41, 154 N.W. 1097, 1098 (1915). Emancipation is an act of a parent, which act need not be in writing or in express words, but may be implied from the parent's conduct. *In re Fiihr*, 289 Minn. 322, 326, 184 N.W.2d 22, 25 (1971) (citing *City of Minneapolis v. Town of Orono*, 212 Minn. 7, 9, 2 N.W.2d 149, 150 (1942)). A parent emancipates the minor when the parent (1) waives the right to the services and earnings of the minor, and (2) surrenders the parent's control over the minor. *Taubert v. Taubert*, 103 Minn. 247, 248-49, 114 N.W.763, 764 (1908) (citing 1 EDWIN A. JAGGARD, HAND-BOOK ON THE LAW OF TORTS 462 (1895)).⁶ The right of control is, itself, a reciprocal benefit to the parent arising from the parental obligation to

emancipation developed under English statutory law would be part of Minnesota's received pre-Revolutionary common law. While citing to poor-relief decisions addressing emancipation from England and Minnesota's sister states, *Lufkin* expanded the doctrine into other areas of Minnesota common law.

Moreover, by changing the focus to the actions of the parent rather than those of the minor, *Lufkin* and its progeny grant Minnesota parents greater protections than they would have enjoyed before the Revolution. Therefore, assuming an originalist analysis is necessary, as suggested by *amicus* FML, the Due Process Clause would offer Appellant *less* protection than she enjoys under present Minnesota law.

⁶ Edwin A. Jaggard was a member of the Minnesota Supreme Court at the time *Taubert* was decided. See *In re Justice Jaggard*, 113 Minn. xix, xix (1911) (noting his election to the Minnesota Supreme Court in 1904 and reelection to the Court in 1910).

provide a child with food, lodging, and an education. See 1 JAGGARD, HANDBOOK ON THE LAW OF TORTS 462 (noting that the familial bonds exist for purposes of common law “[s]o long as the parent is under obligation to care for, guide, and control, and the child is under reciprocal obligation to aid, comfort, and obey”); 1 WILLIAM BLACKSTONE, COMMENTARIES *452 (“The power of parents over their children is derived from the former consideration, their duty: this authority being given them, partly to enable the parent more effectually to perform his duty, and partly as a recompense for his care and trouble in the faithful discharge of it.”); cf. *Hodgson v. Minnesota*, 497 U.S. 417, 445–46, 110 S. Ct. 2926, 2942–43 (1990) (Stevens, J.) (stating that biological parentage generally offers only an opportunity to develop a relationship with the child, “[b]ut the demonstration of commitment to the child through the assumption of personal, financial, or custodial responsibility may give the natural parent a stake in the relationship with the child rising to the level of a liberty interest.”); JOHN LOCKE, TWO TREATISES ON GOVERNMENT, bk. II, §§ 58, 65 (stating that the power of a parent over a child arises from the parental duty to care for and educate the child, and that such right is forfeited when the parent fails to perform that duty).

Thus, cases touching on emancipation merely recognize an already-existing change of status. They do not judicially enact the emancipation of the minor. By the time the issue of emancipation comes before a court, the emancipation itself is a *fait accompli*, and whether a parent has emancipated a minor is a question of fact—not a question of judicial discretion. *See City of Minneapolis*, 212 Minn. at 9, 2 N.W.2d at 150 (stating that emancipation is a “fact issue”); *Taubert*, 103 Minn. at 249, 114 N.W. at 764 (same). The parent has already relinquished her obligations to provide for the child, and in the process the child has already been released of her obligations to the parent.

For example, *Taubert* addressed the doctrine of emancipation when resolving a fact question controlling the then-recognized doctrine of parental immunity to tort claims by their unemancipated minor children. 103 Minn. at 249, 114 N.W. at 764. In *Lufkin*, the parents raised the defense of emancipation against an implied contract claim brought by a hospital that had provided necessary medical services to their minor child. 131 Minn. at 240, 154 N.W. at 1097–98 (1915). Both *In re Fiihr* and *City of Minneapolis* were disputes between governmental subdivisions as to whether a minor was emancipated and able to establish a “settlement” different than the parents’ for purposes of determining which governmental subdivision was

responsible for providing the minor with social services. *In re Fiihr*, 289 Minn. at 324, 184 N.W.2d at 24; *City of Minneapolis*, 212 Minn. at 7–8, 2 N.W.2d at 149–50. In all of these cases, “emancipation” was not the claim being litigated, but was a fact upon which liability would turn.

In sum, emancipation arises as a result of the private reordering of the relationship between a parent and her minor child. *In re Fiihr*, 289 Minn. at 326, 184 N.W.2d at 25 (stating that emancipation is an act of the parent that releases the minor from the parent’s control) (citing *City of Minneapolis v. Town of Orono*, 212 Minn. at 9, 2 N.W.2d at 150); *Taubert*, 103 Minn. at 248–49, 114 N.W. at 764 (same). In this regard, emancipation is analogous to contract formation, through which private parties create or modify rights with respect to each other. The formation of a contract occurs outside of the courtroom, but may need to be resolved as a question of fact if the contract is raised in support of a claim or defense in litigation. *See Watkins Inc. v. Chilkoot Distrib., Inc.*, 655 F.3d 802, 805 (8th Cir. 2011) (stating that in Minnesota, the existence of a contract is ordinarily a question of fact) (citing *Morrisette v. Harrison Int’l Corp.*, 486 N.W.2d 424, 427 (Minn. 1992)). However, the private reordering of rights through a contract is not itself a judicial act. *Flagg Bros., Inc.*, 436 U.S. at 160, 98 S. Ct. at 1735.

Here, E.J.K.’s emancipation, if it occurred, was effected by Appellant and E.J.K. Thus, Fairview did not emancipate E.J.K., nor did it terminate Appellant’s parental rights. It only allegedly provided healthcare services with E.J.K.’s consent. Fairview’s alleged conduct did not alter Appellant’s parental rights. If Appellant had released her parental rights by emancipating E.J.K., then the rights were already gone when Fairview provided the alleged healthcare services. If Appellant did not release her parental rights, then they remained in existence until E.J.K. reached the age of majority. But the status of E.J.K. immediately preceding her 18th birthday is not a federal question—it is a question of state law.⁷ Fairview could not have “adjudicated” and did not “adjudicate” that status merely by providing E.J.K. with prescription medication.

⁷ If Appellant had truly been interested in resolving this state-law question judicially, she could have sought a judicial declaration from a Minnesota state court as to E.J.K.’s status. She did not do so. This further undercuts Appellant’s due-process claim, which is premised on her contention that she had no procedure available to her under Minnesota law through which she can have a court determine whether E.J.K. is an unemancipated minor subject to her custody and control. App.47, ¶ 189. Appellant does not explain why an action under the Minnesota Uniform Declaratory Judgments Act “to declare rights, status, and other legal relations whether or not further relief is or could be claimed” does not provide her with the procedural means to obtain such relief. Minn. Stat. § 555.01 (2016).

III. Under the Facts Alleged, It Was Lawful for Fairview to Provide Prescription Medication to E.J.K.

Fairview's alleged conduct was not unconstitutional, and instead was in accordance with Minn. Stat. § 144.341 and the prior common law. Appellant's contention that the statute permits an "emancipation" simply misconstrues the role of consent in medical treatment and the purpose behind permitting certain minors to provide such consent. Under Minnesota law, unconsented-to medical treatment constitutes a battery in tort. *Kohoutek v. Hafner*, 383 N.W.2d 295, 298 (Minn. 1986) (citing *Mohr v. Williams*, 95 Minn. 261, 271, 104 N.W. 12, 16 (1905)). Consent takes the treatment out of the realm of tort because "battery consists of an unpermitted touching" and "[t]he touching is permitted if the patient consents to it." *Id.* at 299.⁸ The minor medical consent statute relieves any common-law disability of a minor to consent to medical treatment when the minor lives independently and is self-supporting. Minn. Stat. § 144.341. It

⁸ Minnesota's common law rule is roughly consistent with the pre-Revolutionary common law on medical malpractice, where the consent to the treatment took the case out of the realm of intentional tort, and the physician's undertaking to cure the patient established a basis for an action on the case in assumpsit in the event that the treatment harmed the patient. See generally J.B. Ames, *The History of Assumpsit*, 2 HARV. L. REV. 1, 2-4 (1888).

also provides the medical provider with a right to enforce the minor's promise to pay such medical services. Minn. Stat. § 144.347.

Nor would such a disability have existed at common law. Under the common law, most contracts signed by a minor were voidable. *Cogley v. Cushman*, 16 Minn. 397, 401 (1871) (citing 2 JAMES KENT, COMMENTARIES ON AMERICAN LAW). However, a minor had the legal capacity to contract for necessities. THE INFANTS LAWYER 165. But the capacity to contract for necessities existed only if the minor was living outside of the home of the minor's parent or guardian. 2 JAMES KENT, COMMENTARIES ON AMERICAN LAW *196 (1826) ("If the minor lives with his father or guardian, and their care and protection are duly exercised, he cannot bind himself even for necessaries."). For at least four centuries, a minor's capacity to contract for necessities has included the capacity to contract for medical services. *Dale v. Copping*, 1 Bulst. 39, 39-40, 80 ER 743, 743 (K.B. 1610) (holding that the minor defendant's contract to pay plaintiff for medical treatment of his "falling sickness" was enforceable as a contract for necessities).⁹

⁹ Because it is a pre-Revolutionary case, *Dale* is part of the received common law of Minnesota. *Dahlin*, 784 N.W.2d at 409. The rule in *Dale* is consistent with the minor medical consent statute. Minnesota has not overruled or statutorily revoked the common-law capacity of minors to contract for necessities. Therefore, *Dale* itself is still good law in Minnesota. See *Agassiz*

Thus, contrary to *amicus* FML's position, E.J.K.'s ability to contract for medical services would have been well-established under the pre-Revolutionary common law. Minnesota's minor medical consent statute's only apparent derogation from this prior common law is to relieve the parent of the financial obligation to pay for the healthcare services provided to the minor. Compare Minn. Stat. § 144.347, with *Lufkin*, 131 Minn. at 240, 154 N.W. at 1097-98 (noting an implied contract on the part of the parents of an unemancipated minor to pay for healthcare services), and 2 JAMES KENT, COMMENTARIES *162 (noting a legal duty on the part of the parent to pay for the minor's necessities if the minor is residing outside of the home). Thus, the statute is substantially a codification of the prior common law.

Assuming the truth of the facts in the Complaint, E.J.K. was living apart from Appellant and supporting herself when she received treatment from Fairview. App.25, ¶¶ 53-54. Therefore, Minn. Stat. § 144.341 was satisfied and Fairview had a good-faith basis to rely on E.J.K.'s

& Odessa Mut. Fire Inc. Co. v. Magnusson, 272 Minn. 156, 166, 136 N.W.2d 861, 869 (1965) (stating if a statute "does not contain any clause repealing, restricting, or abridging the (common-law) rule," then the effect of the statute is "to enlarge, extend, and supplement the common-law rule" (quotation omitted)); accord *Simmons v. Simmons*, 486 N.W.2d 788, 791 (Minn. 1992). Under *Dale*, E.J.K. had the legal capacity to contract with Fairview for prescription medication. 1 Bulst. at 39-40, 80 ER at 743.

representations. In sum, under Minnesota law and the common law, E.J.K. was deemed to have given effective consent and Fairview lawfully provided E.J.K. the alleged medical services. If Appellant wanted to end the effect of the statute prior to E.J.K. becoming an adult, Appellant needed to persuade E.J.K. to move home or to permit Appellant to manage E.J.K.'s financial affairs (or to persuade the State of Minnesota to compel E.J.K. to do so). Appellant did neither.

The primary thrust of Appellant's complaint is that the Minnesota Legislature did not provide her with a specific process through which she could challenge E.J.K.'s ability to obtain prescription medication before E.J.K. allegedly sought and obtained healthcare services from Fairview. *E.g.*, App.47, ¶ 188; App.50-.52, ¶¶ 200-209. Indeed, her requested relief appears to seek a declaration that the State of Minnesota, rather than Fairview, has violated her constitutional rights by not providing her with certain procedural protections and enjoining Fairview from providing E.J.K. medical services until such time as the State of Minnesota crafts such a procedure and she has an opportunity to invoke it. App.50-.52, ¶¶ 200-209; App. 54-55, ¶¶ 224, 227-228. But that is a dispute with the State of Minnesota and not Fairview.

Certainly, the Minnesota Legislature could have provided for parental notice and procedure if it believed it to be warranted. For example, the Minnesota Legislature specifically enacted a requirement for parental notification in cases involving a minor's request for abortion services. Minn. Stat. § 144.343, subds. 2–6 (2016). The Legislature simply made a different determination as to whether notification is required under other circumstances. Minn. Stat. § 144.346 (2016). Ultimately, it was within the Minnesota Legislature's prerogative to enact a statute relieving minors of any disability to consent to treatment and any privilege to avoid paying for the treatment. *Morrissey*, 137 U.S. at 159, 11 S. Ct. at 57; *In re Davidson's Will*, 223 Minn. at 275, 26 N.W.2d at 227. Fairview cannot force the Minnesota Legislature to enact such procedures, nor should this Court. Instead, if Appellant's objective is to have Minnesota alter its public policy, her remedy is through the legislative process—not through a Section 1983 action against a private nonprofit corporation like Fairview.

The need for a legislative resolution is highlighted by the healthcare services at issue in this case. Appellant alleges one provider rendered gender-transition care. App.34, ¶ 101. By contrast, Appellant alleges Fairview prescribed medication. *Id.* Whether and how to draw a line between any

parental notification required for these very different healthcare services is properly a public policy question for the Minnesota Legislature, not for a federal court of strictly limited jurisdiction. The Court should affirm the dismissal of the claims against Fairview.

IV. The Denial of Summary Judgment is Not Properly before This Court and Should Not Be Reviewed.

In addition to seeking reversal of the District Court's order dismissing the claims against Fairview, Appellant seeks reversal of the denial of her motion for summary judgment. The District Court denied Appellant's motion for summary judgment "[b]ecause her claims are meritless." Add.13. This Court should not disturb the District Court's ruling because, for the reasons laid out above, the District Court correctly evaluated the *legal* merits of Appellant's claims. In addition, the Court should not reverse the denial of the motion for summary judgment because (1) it is not a reviewable order, and (2) Appellant's request for summary judgment was premature as to the *factual* merits of Appellants' claims.

A. A Denial of a Motion for Summary Judgment Is Not Appealable.

Appellate jurisdiction only exists for appeals from final orders of a district court and a limited class of collateral orders. 28 U.S.C. §§ 1291, 1292.

A district court's denial of a motion for summary judgment is not such an order, because it is not a final adjudication of the merits of the claim. *Shannon v. Koehler*, 616 F.3d 855, 861 (8th Cir. 2010). Although this Court may occasionally exercise "pendent" appellate jurisdiction, such jurisdiction arises "only if the pendent claim is coterminous with, or subsumed in, the claim before the court on interlocutory appeal—that is, when the appellate resolution of the collateral appeal necessarily resolves the pendent claim as well." *Kincade v. City of Blue Springs*, 64 F.3d 389, 394 (8th Cir. 1995) (quotation omitted).

Here, the question of whether Appellant stated a claim upon which relief can be granted is not coterminous with the question of whether Appellant established that she is entitled to summary judgment on such claims. The standard on a Rule 12 motion expressly required the District Court not to consider filings outside of the pleadings, nor did the District Court reach the evidentiary merits of Appellant's motion for summary judgment. Accordingly, the present appeal does not fall outside of the general rule that the *denial* of a motion for summary judgment is an interlocutory order that is not subject to an immediate appeal. Simply put,

this Court is without appellate jurisdiction to review the District Court's denial of Appellant's motion for summary judgment.

B. Appellant's Motion for Summary Judgment Was Premature because Fairview Needs Discovery to Oppose the Motion.

Moreover, Appellant's request for summary judgment against Fairview was premature. Neither Fairview nor any of the parties had an opportunity to explore the factual basis for Appellant's claims through discovery. A district court may deny a motion for summary judgment as premature when the nonmoving party shows that "it cannot present facts essential to justify its opposition." Fed. R. Civ. P. 56(d). The purpose of this Rule is to provide a safeguard against premature requests for summary judgment, and the Rule is applied "with a spirit of liberality." *U.S. ex rel. Bernard v. Casino Magic Corp.*, 293 F.3d 419, 426 (8th Cir. 2002) (quoting 10B CHARLES ALAN WRIGHT, ARTHUR R. MILLER, & MARY KAY KANE, FED. PRAC. & PROC.: CIVIL 3D § 2740 (1998)). As the matter stood when the District Court granted Fairview's motion to dismiss, discovery was needed into the status of the relationship between Appellant and E.J.K.

Specifically, discovery was required to determine whether Appellant had, in fact, already emancipated E.J.K. Moreover, the available facts related to this issue were in conflict, which reinforced the need for discovery.

Appellant urged that she has always offered a residence to E.J.K., that she has made efforts to preserve her emotional connection to E.J.K., and that she has never given up her control over E.J.K. However, E.J.K.'s opposition to Appellant's motion for summary judgment portrays a significantly conflicting account of the family relationship and calls into question Appellant's account. E.J.K.'s position was substantiated by the Appellant's account, which suggested that Appellant emancipated E.J.K. Specifically, Appellant appears to have waived her right to E.J.K.'s earnings. *See generally* Minn. Stat. § 181.01 (2016) ("Any parent or guardian claiming the wages of a minor in service shall so notify the employer and, if failing to do so, payment to the minor of wages so earned shall be valid.") In addition, although more ambiguous, the E.J.K. and Appellant's accounts suggest that discovery may show that Appellant waived her right to require E.J.K. to live with her and abdicated her duty to house E.J.K.

Fairview is not in control of either Appellant or E.J.K. Therefore, if this Court were to hold that Appellant stated a claim against it, Fairview would require an opportunity to explore these facts through discovery.¹⁰

¹⁰ Discovery would also have been necessary due to the constraints on Fairview's ability to use any evidence that may be in its possession. Because E.J.K. received treatment pursuant to consent given under Minn. Stat.

The absence of this discovery was not the result of any delay by Fairview. The Complaint was served on Fairview on November 17, 2016, and Appellant filed the motion for summary judgment less than one month later. App.1. All but two appellees moved to dismiss, and therefore were not even required to serve or file answers until their motions were resolved.¹¹ Fed. R. Civ. P. 12(4)(A). Accordingly, when the District Court issued its order, the parties had not even yet engaged in a Rule 26(f) scheduling conference or exchanged initial disclosures. As a result, discovery had not yet commenced. Fed. R. Civ. P. 26(d)(1).

§ 144.341, the Minnesota Health Records Act prohibits Fairview from disclosing E.J.K.'s medical records to Appellant. Minn. Stat. §§ 144.291, subd. 2(g), 144.293, subd. 2 (2016). Due to medical privacy laws, Fairview itself was unable to provide the District Court with evidence that could have come into its possession if it provided healthcare services to E.J.K. 45 C.F.R. §§ 164.502(a), 164.512(e) (limiting the ability of healthcare providers to disclose the protected health information of patients in court proceedings); *accord* Minn. Stat. § 595.02, subd. 1(d) (2016). Therefore, Fairview had no ability to introduce its own affidavit testimony as to the specifics of any treatment it may or may not have provided E.J.K. These constraints also restricted Fairview's ability to directly disclose the representations, if any, by E.J.K. upon which Minnesota law permitted it to rely in good faith. Minn. Stat. § 144.345 (2016). Appellant did not offer any admissible evidence indicating that it would have been a bad faith act for Fairview to rely on E.J.K.'s hypothetical representations to Fairview. The only way for Fairview to have obtained such evidence in a form that it could use in its own defense would have been to request it from E.J.K. during discovery.

¹¹ Appellees St. Louis County and Linnea Mirsch jointly answered the Complaint and filed a motion for judgment on the pleadings. App.3-4.

In sum, the evidentiary record necessary to resolve this litigation on its factual merits was never developed because the litigation was quickly disposed of due to Appellant failing to state a claim upon which relief could be granted. Even if a claim was properly stated, this Court should not reverse the denial of the motion for summary judgment because discovery is required before a ruling on that motion would be warranted.

Conclusion

Minnesota's minor medical consent statute does not delegate the sovereign power to resolve disputes to a healthcare provider. The statute simply permits a minor who is living independently the ability to provide effective medical consent to receive healthcare services. A healthcare provider who renders services pursuant to such consent does not become a state actor and is not "adjudicating" the "emancipation" of the minor. The provider is simply rendering healthcare services with the consent of a patient.

Simply put, the minor medical consent statute does not, as Appellant suggests, require the healthcare provider to make any adjudication, much less an "implicit determination" that the Appellant was unfit to be a parent. App't Br. 38. Neither emancipation *by a parent*, nor the contracting for

necessities *by a minor*, constitute a termination of parental rights *by a court*.

The issues are unrelated. Fairview was not required to consider Appellant's fitness as a parent before providing E.J.K. with prescription medication pursuant to E.J.K.'s effective medical consent. Fairview does not take a position on that issue now.

Because Section 1983 only permits claims against a private party acting as a state actor, the District Court properly held that Appellant failed to state a claim against Fairview under Section 1983. This Court should affirm the dismissal of the claims against Fairview.

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Dated: September 28, 2017

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