

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Anmarie Calgario,

Court File No.: 0-16-cv-03919-PAM-LIB

Plaintiff,

vs.

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 County
School District; and J.D.K.,

Defendants.

**MEMORANDUM IN SUPPORT OF
DEFENDANT PARK NICOLLET
HEALTH SERVICES'
MOTION TO DISMISS**

INTRODUCTION

Park Nicollet Health Services (“Park Nicollet”) is not a state actor and did not deprive Plaintiff of rights protected under the 14th Amendment to the United States Constitution. As a result, Plaintiff’s claims against Park Nicollet fail as a matter of law. Park Nicollet respectfully requests that the Court dismiss Plaintiff’s Verified Complaint for Declaratory Relief and Injunction (Document 1) with prejudice.

FACTUAL BACKGROUND

Plaintiff has sued her own child along with her child's school district, medical providers, St. Louis County and various government officials for allegedly violating her constitutional rights. Plaintiff's child was assigned the male gender at birth, but identifies as female. As a matter of respect, Park Nicollet uses female pronouns, the word "daughter" or the initials "E.J.K." when referring to Plaintiff's child. *See Hunter v. United Parcel Serv., Inc.*, 697 F.3d 697, 700 (8th Cir. 2012) (using male pronouns to refer to party who was born female but identified as male). Plaintiff claims that Park Nicollet interfered with her parental rights by complying with Minnesota state law concerning consent for medical care and the release of medical records.

A. The Parties.

Plaintiff is the biological mother of E.J.K. (Verified Complaint at ¶ 3.) E.J.K. was born on July 6, 1999, and will turn 18 on July 6, 2017. (*Id.*) Plaintiff has sole physical custody and joint legal custody of E.J.K. (*Id.* at ¶ 44.)

Park Nicollet is a Minnesota non-profit corporation that provides medical services. (*Id.* at ¶ 10.) It operates a Gender Services Clinic in Minneapolis, Minnesota. (*Id.*) Park Nicollet is required to comply with federal and state law. (*Id.*) While Plaintiff asserts that Park Nicollet operates "under the color of state law," she alleges no facts to support that belief. (*Id.* at ¶ 11.)

B. E.J.K. Lives Apart From Plaintiff.

Through a letter dated June 29, 2015, a Legal Aid attorney explained that, as of that date, E.J.K. had lived apart from her mother since approximately the beginning of

2015. (Verified Complaint, Ex. A.) The letter also explained that E.J.K. had been supporting herself since at least the beginning of 2015. (*Id.*) According to the letter, Plaintiff knows where E.J.K. lives and has taken no legal action to return E.J.K. to Plaintiff's home. (*Id.*) The letter is attached to Plaintiff's Verified Complaint. (*Id.*)

Plaintiff asserts that the Legal Aid letter "does not accurately reflect" her relationship with E.J.K., but has not alleged any specific factual inaccuracies in the letter. (Verified Complaint at ¶ 58.) For example, Plaintiff does not allege that her daughter *actually* lived with Plaintiff at any time relevant to this case or that Plaintiff *really* managed her daughter's personal financial affairs at any time relevant to this case. In fact, Plaintiff expressly alleges that she does not provide for her daughter financially and that "St. Louis County provided . . . funds and/or approved funding for medical services and other living expenses." (*Id.* at ¶ 6.) She also alleges that her daughter does not live with her at this time. (*Id.* at ¶ 53).

C. E.J.K. Seeks Medical Care.

Beginning no later than January 15, 2016, E.J.K. received care from Park Nicollet's Gender Services Clinic. (Verified Complaint, Ex. C.) She apparently received medically necessary treatment consistent with guidelines established by the World Professional Association for Transgender Health. (*Id.*) This included gender transition care. (*Id.*)

Park Nicollet was not required to obtain Plaintiff's consent to treat E.J.K. because, under Minnesota law, E.J.K. was responsible for her own medical decisions. Minn. Stat. § 144.341 (2016). Under one of Minnesota's "consent of minors for health services"

statutes, a minor may give consent for her own non-emergency medical care if she lives apart from her parents and is “managing [her] personal financial affairs.” Minn. Stat. § 144.341 (2016). Plaintiff appears to concede that E.J.K. has not lived with Plaintiff for some substantial period of time and is financially independent from Plaintiff. Thus, Plaintiff concedes that E.J.K. meets the substantive test under Minnesota law to consent to her own non-emergency medical care.

D. Plaintiff Contacts Park Nicollet.

Plaintiff contends that, at some point during 2016, she requested E.J.K.’s medical records from Park Nicollet and asked to participate in E.J.K.’s medical decisions. (Verified Complaint at ¶ 113.) But Plaintiff does not allege that she ever notified Park Nicollet (or anyone else) that E.J.K. did not qualify to make her own medical decisions under Minnesota law or that, in fact, E.J.K. actually lived with Plaintiff or was financially provided for by Plaintiff. Plaintiff does not allege that Park Nicollet somehow ignored Plaintiff’s efforts to correct Park Nicollet’s understanding of E.J.K.’s living or financial situation. The reason for this glaring omission is obvious: Plaintiff has no factual basis to contest the application of Minn. Stat. § 144.341 here because Plaintiff’s daughter really does live independently from Plaintiff.

ARGUMENT

Plaintiff’s claims against Park Nicollet fail as a matter of law. Plaintiff’s allegation under 42 U.S.C. § 1983 that Park Nicollet violated the 14th Amendment fails because Park Nicollet is not a state actor. While Plaintiff is free to challenge Minn. Stat. § 144.341, she cannot assert her constitutional challenge against Park Nicollet, a private

party. Therefore, the Court lacks subject matter jurisdiction and should dismiss Park Nicollet with prejudice.

Alternatively, Plaintiff's claim would fail even without regard to Section 1983's state actor requirement because Plaintiff has not been deprived of any rights secured by the 14th Amendment. Plaintiff's Verified Complaint fails to allege a plausible violation of the 14th Amendment because it does not allege that the state has required or prohibited Plaintiff from doing anything. Because Plaintiff's 14th Amendment claim fails to state a claim upon which relief can be granted, her requests for declaratory and injunctive relief necessarily fail as well.

It is also worth noting that, even if Plaintiff were granted some additional process, that process would not change the outcome of this case. Plaintiff's procedural due process claim does not challenge the substantive test for medical consent under Minn. Stat. § 144.341. Plaintiff admits that E.J.K. lives on her own and handles her own finances. As a result, any additional "process" would still result in E.J.K. making her own decisions about her health care. Plaintiff's procedural due process claim is futile.

A. Standard For Determining Subject Matter Jurisdiction.

Under Federal Rule of Civil Procedure 12(b)(1), the Court "must" dismiss an action when it lacks subject matter jurisdiction. Fed. R. Civ. P. 12(h)(3). A district court may weigh evidence to determine whether it has jurisdiction to hear a case. *Osborn v. United States*, 918 F.2d 724, 730 (8th Cir. 1990). Plaintiff has the burden of proof to establish that jurisdiction exists. *Id.*

B. Plaintiff's 14th Amendment Procedural Due Process Clause Claim Fails Because Park Nicollet Is Not a State Actor.

Plaintiff's Count I alleges a claim under 42 U.S.C. § 1983 that Park Nicollet violated the 14th Amendment. (Verified Complaint at ¶¶ 172-221.) Specifically, Plaintiff alleges that Park Nicollet made a "determination of . . . emancipation" that supposedly "terminated [her] protected constitutional parental rights." (*Id.* at ¶ 179.)

"Only state actors can be liable under Section 1983." *Youngblood v. Hy-Vee Food Stores, Inc.*, 266 F.3d 851, 855 (8th Cir. 2001) (affirming summary judgment in case against store that detained shoplifting suspect). The state actor requirement of Section 1983 "excludes from its reach merely private conduct, no matter how . . . wrongful." *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50 (1999). If the Court finds that Park Nicollet is not a state actor, then it lacks jurisdiction to hear Plaintiff's Section 1983 claim. *Alexander v. Pathfinder, Inc.*, 189 F.3d 735, 740 (8th Cir. 1999); *Smith v. Univ. of Minnesota Med. Ctr. – Fairview Riverside*, Civil No. 09-293, 2010 WL 3893902, at *9 (D. Minn. July 14, 2010) (report and recommendation), *report and recommendation adopted*, No. CIV 09-0293 JRT JSM, 2010 WL 3893849 (D. Minn. Sept. 30, 2010).

Park Nicollet is not a state actor. As Plaintiff's Verified Complaint makes clear, Park Nicollet "is a Minnesota non-profit corporation which provides medical services to members of the public." (Verified Complaint at ¶ 10.) *See* Dkt. No. 14 (Park Nicollet's Rule 7.1 Disclosure). Because Park Nicollet is a private actor, not a state actor, the Court lacks subject matter jurisdiction and Plaintiff's Section 1983 claim should be dismissed. *Hoyt v. St. Mary's Rehab. Ctr.*, 711 F.2d 864, 865 (8th Cir. 1983) ("We agree with the

District Court that there is no state action, so that [plaintiff's] constitutional and § 1983 claims must fail"); *Lubin v. Crittenden Hosp. Assoc.*, 713 F.2d 414, 415 (8th Cir. 1983).

Plaintiff attempts to avoid this result by alleging that Park Nicollet "receives state funding to provide medical services to the public." (Verified Complaint at ¶ 10.) But the mere receipt of state funds does not transform Park Nicollet into a state actor. *Alexander*, 189 at 740 ("Pathfinder is a private corporation and the fact that it receives Medicaid funds does not convert it into a state actor"); *see also Smith* 2010 WL 3893902, at *10.

Nor does the fact that Park Nicollet, a medical provider, is subject to extensive government regulation make Park Nicollet a state actor. A private party does not become a state actor simply "because it is subject to extensive governmental regulation and licensing." *Nichols v. Metro. Ctr. for Indep. Living, Inc.*, 50 F.3d 514, 518 (8th Cir. 1995); *see also Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982). As such, Plaintiff's allegation that "Park Nicollet is responsible for adhering to . . . state law and federal law"¹ does nothing to support the notion that Park Nicollet is a state actor. *Nicols*, 50 F.3d at 518 (private corporation not state actor even though "it depends upon government for nearly all its funding; . . . it performs uniquely public functions; and . . . it is subject to extensive governmental regulations and licensing").

Because Plaintiff cannot rely on the receipt of state funds or the existence of state regulations to transform Park Nicollet into a state actor, she will likely claim that Park Nicollet somehow became a state actor by complying with Minn. Stat. § 144.341. Such an argument would fail because the United States Supreme Court has determined that

¹ Verified Complaint at ¶ 10.

even a private party's invocation of state legal procedures does not satisfy the state actor requirement of Section 1983. *Lugar v. Edmondson Oil Co., Inc.*, 457 U.S. 922, 939 n.21 (1982).

In this case, Park Nicollet merely complied with Minnesota law in determining that E.J.K. was permitted to provide consent for her own medical care. Minn. Stat. § 144.341 (2016). Plaintiff does not contend that E.J.K. lives with Plaintiff or is provided for financially by Plaintiff. In fact, Plaintiff seems to agree that Park Nicollet followed Minn. Stat. § 144.341 and correctly concluded that E.J.K. had the ability to consent to her own medical care. Because following the law does not convert a private corporation into a state actor, Plaintiff's 14th Amendment claim fails. *Lugar*, 457 U.S. at 939 n.21.

Park Nicollet is not a state actor, and the Court lacks subject matter jurisdiction over Plaintiff's 14th Amendment claim against Park Nicollet. Because Plaintiff's Count I fails for lack of subject matter jurisdiction, Plaintiff's Count II (declaratory relief) and Count III (injunctive relief) also fail. *Parkhurst v. Tabor*, 569 F.3d 861, 864-65 (8th Cir. 2009) (affirming dismissal of claims for declaratory and injunctive relief in case where Section 1983 claim failed). The Court should dismiss Plaintiff's Verified Complaint against Park Nicollet.

C. Standard For Determining Whether A Complaint Fails To State A Claim Upon Which Relief May Be Granted.

The Court will dismiss a Complaint that fails to state a claim for which relief can be granted. Fed. R. Civ. P. 12(b)(6). While the Court "accept[s] the factual allegations of the complaint as true," those "allegations must supply sufficient 'facts to state a claim

to relief that is plausible on its face.” *O’Neil v. Simplicity, Inc.*, 574 F.3d 501, 503 (8th Cir. 2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 1949 (2009).

D. Plaintiff’s Procedural Due Process Claim Against Park Nicollet Fails Because Plaintiff’s Constitutional Rights Have Not Been Violated.

“To set forth a procedural due process violation, a plaintiff, first must establish that [her] protected liberty or property interest is at stake. Second, the plaintiff must prove that the defendant deprived [her] of such an interest without due process of law.” *Schmidt v. Des Moines Pub. Schs.*, 655 F.3d 811, 817 (8th Cir. 2011) (internal quotation omitted). “Due process is a flexible concept, requiring only such procedural protections as the particular situation demands.” *Id.* (internal quotation omitted). Here, Plaintiff already has a process under which she could control whether or not E.J.K. could consent to her own medical procedures. Specifically, Plaintiff could have E.J.K. living in her home or manage E.J.K.’s finances. If either of those things were to happen, Minn. Stat. § 144.341 would no longer apply and Park Nicollet would be required to obtain Plaintiff’s consent to perform any further treatment on E.J.K. Plaintiff has avenues through state law and private family counseling through which to provide a home or financial management for E.J.K. that do not involve creating a court process under Minn. Stat. § 144.341. The fact Plaintiff has failed to avail herself of these avenues does not give rise to a due process claim for an alternative process. *See Schmidt*, 655 F. 3d at 815, 818 (where sufficient remedies are available under state law, there is no procedural due process violation).

This is not a case where Plaintiff called Park Nicollet and said that E.J.K. provided false information relating to her living situation and Park Nicollet refused to investigate Plaintiff's claims. Plaintiff does not claim to have disputed the underlying facts relevant to an inquiry under Minn. Stat. § 144.341. If Plaintiff is granted some sort of "process" to evaluate whether the elements of Minn. Stat. § 144.341 are met, that process will simply confirm that E.J.K. can consent to her own medical care.

Minn. Stat. § 144.341 properly balances three constitutional interests. First, E.J.K. has a right to privacy even though she is 17 years old. *See Carey v. Population Servs. Int'l*, 431 U.S. 678, 707 (1977). Second, the State of Minnesota has a substantial interest in the health and welfare of its inhabitants. *Ginsberg v. State of N.Y.*, 390 U.S. 629, 640 (1968). Third, Plaintiff has a right to be free of undue government interference in the care of her children, particularly young children who are living with her. *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923). The Supreme Court has determined that a parent's interests are "no more weighty" than a competent minor's interests. *Planned Parenthood of Cent. Missouri v. Danforth*, 428 U.S. 52, 75 (1976).

Minnesota Statute § 144.341 does not conflict with these constitutional interests. Minn. Stat. § 144.341 merely establishes who may provide consent for certain medical care when a patient is a minor. A parent or guardian is ordinarily responsible for consenting to medical care, but minors may themselves provide consent under the narrow circumstances described in the statute.²

² The Supreme Court has not "marked the boundaries of a parent's right to control the medical treatment of a his or her child." *Kia P. v. McIntyre*, 235 F.3d 749, 757 n.3

Under Minn. Stat. § 144.341, a minor who is not living with a parent or guardian and is not being supported financially by a parent may provide consent for her own medical care. This does not mean that the minor has been “emancipated,” as Plaintiff alleges, just that the medical provider may rely in good faith on the patient’s consent for medical treatment. Minn. Stat. § 144.345 (2016).

Minn. Stat. § 144.341 does not deprive parents of their right to care for their children. It merely recognizes that, in those situations where a parent is no longer providing a home or financial support, the parent is also not required for consent. This logic is easily in keeping with cases concerning parental rights. *See, e.g., Wisconsin v. Yoder*, 406 U.S. 205, 233 (1972) (discussing parent rights for “those who nurture [a child] and direct his destiny”). Parents who are no longer providing a home or managing financial resources are not permitted to claim that the state has deprived them of their parental rights when their child takes responsibility for medical decisions. *See, e.g., id.; Meyer*, 262 U.S. at 400 (recognizing that duties of parents correspond to right of control).

“Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults, are protected by the Constitution and possess constitutional rights.” *Danforth*, 428 U.S. at 75. The State of Minnesota has determined that the age of majority for certain privileges and rights is 18, but not for all privileges and rights. For example, Minnesota law permits those under age 18 to drive motor vehicles (Minn. Stat. § 171.055) or to consent to sexual contact in

(2d Cir. 2000) (holding hospital who provided medical care to minor was not a state actor).

certain instances (Minn. Stat. § 609.345), but does not permit individuals between the ages of 18 and 20 to consume alcohol (Minn. Stat. § 120A.22, subd. 8). *See, e.g., Stanton v. Stanton*, 421 U.S. 7, 15 (1975) (describing discrepancies in state statutes regarding age of majority). In contrast, Minnesota law also imposes a duty to provide child support after age 18 in some circumstances. Minn. Stat. § 518A.26 (for purposes of child support, defining child as an “individual under 18 years of age” or “an individual under age 20 who is still attending secondary school.”) Minn. Stat. § 144.341 balances rights in the unique situation where a parent is no longer providing a home or financial support to a minor child who needs non-emergency medical care.

Significantly, no formal legal proceeding is necessary for a parent to notify a medical provider that a minor is not permitted to give consent for medical treatment. Rather, a parent may simply notify a provider that the parent continues to live with the minor or manage the minor’s finances. If Plaintiff believed that her daughter should not be permitted to make her own medical decisions, then Plaintiff could have arranged to have E.J.K. returned to Plaintiff’s home so that Minn. Stat. § 144.341 would no longer apply. But Plaintiff cannot attempt to litigate the consequences of her own decision to let E.J.K. live separate and apart from her and to allow E.J.K. to support herself financially. *See M.S. v. Werners*, 557 F.2d 170, 178 (8th Cir. 1977) (Henley, J., dissenting) (“The right to custody and control over a minor child accrues to parents in reciprocation for their duty to support, educate and protect that child”). Of course, if a child and parent disagree about whether Minn. Stat. § 144.341 has been satisfied, either one is free to seek a judicial declaration concerning that matter. Minn. Stat. § 555.01 (2016).

Absent Minn. Stat. § 144.341, medical providers may not be able to obtain informed consent for non-emergency care. They may be forced to withhold treatment simply because a parent who has failed to provide for her child, refuses consent. Minn. Stat. § 144.341 provides a more sensible solution: the individual who is providing housing for the minor and who is managing the minor's financial affairs is empowered to consent to the minor's medical treatment.

Once a medical provider has determined in good faith that a minor may consent to medical care under Minn. Stat. § 144.341, the patient's medical records are private under state and federal law, and may not generally be released without the patient's authorization. Minn. Stat. §§ 144.291(h); 144.293; 42 C.F.R. 164.502(g)(3). However, the health professional remains free to notify a parent concerning medical matters if failure to do so would jeopardize the patient's health. Minn. Stat. § 144.346; *Hodgson v. Minnesota*, 497 U.S. 417, 423 n.1 (1990). Plaintiff makes no allegation that Park Nicollet's failure to disclose E.J.K.'s medical records would jeopardize E.J.K.'s health.

It should be emphasized that Plaintiff has not alleged that she has attempted to reassert any right to make medical decisions for E.J.K. Rather, Plaintiff has allowed E.J.K. to live on her own and support herself financially, but nevertheless requests that the Court prevent E.J.K. from providing consent for her own treatment. *See Benitez v. Gresham-Barlow Sch. Dist.*, 2012 WL 3878419, *7 (D. Oregon Sept. 6, 2012) ("The facts alleged in the Second Amended Complaint essentially boil down to plaintiffs' inability to communicate with their daughter in order to resolve a family conflict").

Even more importantly, Minn. Stat. § 144.341 does not require or prohibit any activity by Plaintiff or E.J.K. See *Doe v. Irwin*, 615 F.2d 1162, 1168 (6th Cir. 1980) (discussing Supreme Court parenting cases as either “requiring or prohibiting some activity”). Courts have found unconstitutional laws that forbid the teaching of foreign languages to minors or required children ages eight to 16 to attend public schools. *Meyer*, 262 U.S. at 403 (foreign languages); *Pierce v. Soc’y of Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510, 534-35 (public schools). Likewise, a state may not interfere with a parent’s decision to regulate the amount of time a child spends with grandparents, absent some special circumstances that justify state interference. *Troxel v. Granville*, 530 U.S. 57, 68 (2000). Indeed, “[e]very Supreme Court case discussing fundamental rights of parents with respect to their children addresses a state law or regulation that requires children to engage in an activity their parents do not want them to engage in, or prohibits children from engaging in an activity their parents do not want them to engage in.” *Reardon v. Midland Cmty. Schs.*, 814 F. Supp.2d 754, 770 (E.D. Mich. 2011). Minn. Stat. § 144.341 does not require or prevent Plaintiff’s daughter from engaging in any activity.

In short, Minnesota has merely established a voluntary procedure whereby a minor who is living separate and apart from her parents, and who is managing her own personal financial affairs, may give effective consent to medical services. Here, E.J.K. is living separate and apart from her mother, and Plaintiff has elected not to bring E.J.K. back into her home or to provide for her financially. As a result, E.J.K. is now able to give consent for her own non-emergency medical care.

CONCLUSION

Park Nicollet is a private actor, not a state actor. As a result, the Court lacks subject matter jurisdiction over Park Nicollet. That aside, Minn. Stat. § 144.341 sets out a constitutionally permissible way of balancing a minor's right to consent to non-emergency medical care when the minor lives on her own and is not being provided for financially by a parent. The Court should grant Park Nicollet's motion and dismiss Plaintiff's Complaint with prejudice.

Date: December 15, 2016

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UNITED STATES DISTRICT COURT
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Anmarie Calgareo,

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Defendants.

**LR 7.1(f) and (h) WORD
COUNT COMPLIANCE CERTIFICATE
REGARDING MEMORANDUM IN
SUPPORT OF DEFENDANT PARK
NICOLLET HEALTH SERVICES'
MOTION TO DISMISS**

I, David M. Wilk, certify that the Memorandum in Support of Defendant Park Nicollet Health Services' Motion to Dismiss complies with Local Rule 7.1(f) and (h).

I further certify that, in preparation of this memorandum, I used Microsoft Word 2010, and that this word processing program has been applied specifically to include all text, including headings, footnotes, and quotations in the following word count and I also certify that this Memorandum has been prepared in 13 pt. font.

I further certify that the above-referenced Memorandum contains 3,841 words.

Date: December 15, 2016

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