

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Anmarie Calgaro,

Plaintiff,

Court File No. 16-cv-3919 – PAM-LIB

vs.

**DECLARATION OF
ERICK G. KAARDAL**

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.

I, Erick G. Kaardal, declare that the following statements are true to the best of my recollection and knowledge:

1. I am the attorney of record for the Plaintiff, Anmarie Calgaro. I am familiar and have personal knowledge of the facts and procedural posture of the instant matter.
2. I am providing this Court with certain documents as referenced in the Memorandum of Law Supporting the Plaintiff's Motion for Summary Judgment. Although most of the documents are attached as exhibits to the Plaintiff's Complaint, they are presented here for the convenience of the Court.

3. The following documents attached as exhibits are true copies of the originals:

Exhibit No.	Document
A	“Letter of Emancipation” signed by a Staff Attorney for Mid-Minnesota Legal Aid (June 29, 2015) (also attached to Verified Plaintiff’s Complaint as Ex. A) (Redacted)
B	St. Louis County District Court Findings of Fact, Conclusions of Law and Order (Apr. 15, 2016) (also attached to Verified Plaintiff’s Complaint as Ex. A) (Redacted)
C	Park Nicollet Letter, notarized from Julie M. Farias, M.D. to “whom it may concern” (Jan. 20, 2016) (also attached to Verified Plaintiff’s Complaint as Ex. C) (Redacted)
D	Letter from Kenneth W. Crabb, M.D. to Erick G. Kaardal re: Minn. Stat. § 144.341 (Oct. 20, 2016) (redacted)

Under penalty of perjury, I believe each of my statements made in this declaration are true to the best of my recollection and knowledge.

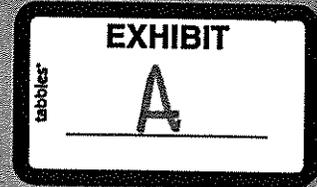
Dated: December 15, 2016.

/s/Erick G. Kaardal
Erick G. Kaardal



73-CV-15-9158

MID-MINNESOTA LEGAL AID
Phong Thao • (612) 746-3763 • pthao@mylegalaid.org



June 29, 2015

To Whom It May Concern:

Emancipation is found whenever a parent surrenders the legal rights to control a child's actions and there has been a substantial severing of the parent-child relationship. Conduct by the parent in giving up control and custody of the minor will legally emancipate the child under Minnesota law. (*Lufkin v. Harvey*, 131 Minn. 238, 240, 241; 154 N.W. 1097 (Minn. S.Ct. 1915)). In this particular case, [redacted] has shared the following information regarding his relationship with his parents.

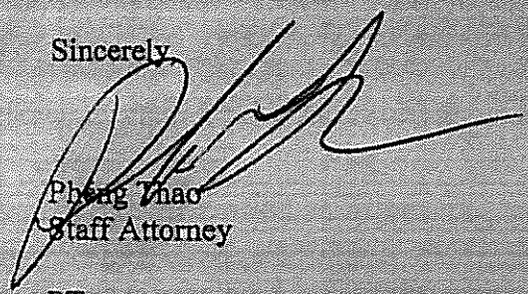
1. [redacted] parents were not married at the time of his birth; therefore, under Minnesota law, his mother is the sole legal and physical custodian;
2. [redacted] has lived apart from his mother for approximately six (6) months now;
3. [redacted] mother has taken no actions to report him as a runaway or taken legal action to keep him in her home;
4. [redacted] mother knows where he is and has made no attempts to bring him home;
5. [redacted] mother has made it known to him that she no longer wishes to have any contact with him;
6. [redacted] attends Sauk Rapids High School and PSEO courses at St. Cloud Technical and Community College;
7. [redacted] is a junior in high school and will be attending college in the fall;
8. [redacted] holds two jobs and has been financially supporting himself for the past six (6) months; and
9. Based on information provided by [redacted], he has not been adjudicated to be under the custody or control of any county entity and is not under the jurisdiction of any juvenile court.

FILED 10-8-15
Stearns County
District Court
By Courtney S.
Deputy

June 29, 2015
Page 2

Given this set of circumstances, [redacted] parents, specifically his mother, have given up control and custody of their child, making [redacted] legally emancipated under Minnesota law.

Sincerely,



Phong Thao
Staff Attorney

PT:cs

Enc.

cc: [redacted]

1506-0410465--1468872

FILED IN
ST. LOUIS COUNTY
APR 15 2016
OFFICE OF
COURT ADMINISTRATOR

STATE OF MINNESOTA
ST. LOUIS COUNTY

DISTRICT COURT
CIVIL DIVISION
SIXTH JUDICIAL DISTRICT

In the Matter of the
Application of:

Court file #69HI-CV-15-74B

[redacted] for
a Change of Name,
Petitioner,

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

DATE OF HEARING: January 20, 2016

EXHIBIT
tabbies
B

APPEARANCES: For Petitioner:

Pro Se

[redacted]
8965 Townline Rd.
Iron, MN 55751

The above matter came on for hearing at the St. Louis County Courthouse in Hibbing, Minnesota before the Honorable David E. Ackerson, Judge of District Court, on an application of name change.

Based on the motion papers that have been filed, THE COURT HEREBY MAKES THE FOLLOWING:

FINDINGS OF FACT

1. This matter came on for hearing on the application of the Petitioner for a change of name from [REDACTED] to [REDACTED].

2. The Petitioner was born July 6, 1999, and is currently 16 years of age. The Petitioner appeared with two witnesses for the hearing, and represented to the court that Petitioner was, or should be considered to be, legally emancipated. Neither of Petitioner's parents appeared at the hearing, neither of the parents had notice of the hearing, and neither of the parents were part of the Application in order to bring the Application in the name of their minor child the Petitioner.

3. The Petitioner requests that, because Petitioner is living independently from Petitioner's parents, the Petitioner should be considered legally emancipated. The Petitioner also filed medical records from Minneapolis Gender Services at Park Nicollet, dated January 15, 2016, signed by a medical doctor who indicates that the doctor is the attending physician of the Petitioner, has a doctor/patient relationship with the Petitioner, and is in the process of treating the Petitioner for transgender medical treatment for the purpose of gender transition from male gender to female gender.

4. At the hearing on January 20, 2016, Petitioner advised the court that a previous application for a change of name had been brought in Stearns County, State of Minnesota, which application was dismissed by the trial



Saint Louis County Court

judge on the grounds that Petitioner failed to comply with the statute authorizing change of name in Minnesota, which requires an application for change of name of a minor child be brought in the name of that child by the parent or guardian. Minn. Stat. §259.10.

5. This court, at the time of the hearing herein, took the entire matter under advisement, with a decision due as of April 19, 2016.

6. On March 21, 2016, while the matter has been under advisement, this court received written correspondence from one Anmarie Calgare, who represents that she is the legal and biological mother of the Petitioner herein, and that she opposes the Application of the Petitioner for a change of name. The correspondence is in longhand, and is not in affidavit form. However, it does indicate her residence in Iron, St. Louis County Minnesota. She is entitled to proper notice of any further proceedings.

CONCLUSIONS OF LAW

1. A legal issue exists as to whether the juvenile Petitioner herein has a legal basis to assert emancipation, and if so, how that would affect Petitioner's entitlement to bring an action as a juvenile for a change of name in the State of Minnesota.

2. A legal issue exists as to whether the court can entertain the application for change of name of a juvenile, not brought by a parent or guardian, and whether this

requirement could be met by bringing a proper application for a Guardian ad Litem pursuant to Minnesota Rules of Civil Procedure, Rule 17.02.

3. On the present record, including the lack of a parent or guardian bringing the Application on behalf of the juvenile; and the lack of any Minnesota trial court adjudication relative to emancipation; as well as the lack of proper notice upon the parents of the juvenile Petitioner herein; as well as the failure to apply for a Guardian ad Litem for the purpose of bringing the Application on behalf of the Petitioner herein; at this time this court cannot consider the Application on the merits as to whether or not it is in the best interests of the Petitioner to achieve the desired relief of a legal change of name.

4. If the foregoing noted procedural and potentially jurisdictional defects in bringing the Application before the court can be resolved, it is likely that an evidentiary hearing, with notice and an opportunity to participate by both the Petitioner and the Petitioner's parents, should be held prior to the court making a decision on the merits.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, *IT IS HEREBY ORDERED AS FOLLOWS:*

1. The present Application filed by the Petitioner herein must be and hereby is dismissed without prejudice.

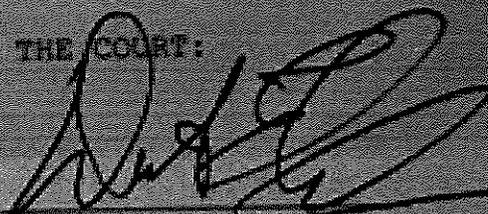
2. Dismissal of this Application shall be without prejudice, to allow for the possibility that procedural and jurisdictional defects may be remedied.

3. Dismissal of the Application herein is stayed for 30 days from the date of this Order, to allow Petitioner and the parents of Petitioner an opportunity to consider this Order, and to take such legal action within the context of this Order as they may deem appropriate.

Dated:

April 15, 2016

BY THE COURT:



Hon. David E. Anderson
Judge of District Court

09HICV 15 748

 **Park Nicollet**
HealthPartners
Minneapolis Gender Services
2001 Blaisdell Ave S
Minneapolis MN 55404
Phone: 952-993-8052

FILED IN
ST. LOUIS COUNTY
JAN 20 2016
OFFICE OF
COURT ADMINISTRATOR

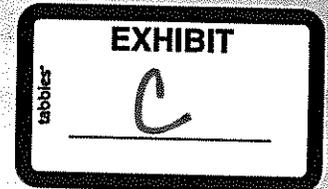
January 15, 2016

8965 Town Line
Iron Junction MN 55751

MRN: 69043707

Phone: (218)780-0712

Patient:
MR Number: 69043707
Date of Birth: 7/6/1999
Date of Visit: 1/15/2016

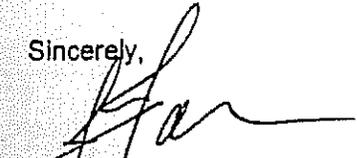


To whom it may concern,

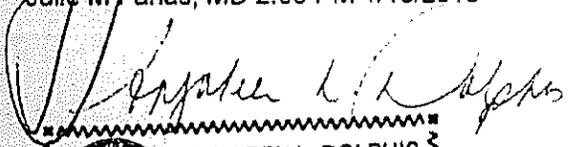
I, Julie Farias, MD, Minnesota State License number 51904, DEA number FC1527956, am the attending physician of _____, with whom I have a doctor/patient relationship, and whom I have treated. I am a family physician who practices according to the World Professional Association for Transgender Health. _____ has had appropriate, permanent clinical treatment for gender transition to the new female gender. All legal documentation including but not limited to Passport, Driver's License, Birth Certificate and Work Identification should reflect the new gender.

I declare under penalty of perjury under the laws of the United States that the forgoing is true and correct.

Sincerely,



Julie M Farias, MD 2:00 PM 1/15/2016

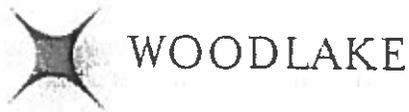


 ANJALEEN L. DOLPHIS
NOTARY PUBLIC - MINNESOTA
My Commission Expires
January 31, 2019

RE: _____ - MR#: 69043707

09HI - CV - 15 - 748
MEDRPT
Medical Report
4211584





October 20, 2016

Erick G. Kaardal, Esq.
Mohrman, Kaardal & Erickson, P.A.
150 South Fifth Street
Suite 3100
Minneapolis, MN 55402

RE:
Claim #: 69HICV15748

Dear Mr. Kaardal:

I was sent a copy of the April 15, 2016 court order signed by Judge Ackerson, and a notarized letter from Dr. Julie Farias indicating that [redacted] had had permanent clinical treatment for gender transition from male to female, and was requesting that [redacted] be identified as a female in all official records.

I also reviewed Minnesota Statutes Sections 144.291, 144.341, 144.345, and 144.346 as well as Section 645.451. I also reviewed the House Research document dated June 2013 entitled, "Minor's Consent for Health Care."

The question before me was if Park Nicollet and Dr. Farias deviated from the statewide standard care by providing non-emergency medical services to a minor child without consent of the parents and without a court order of emancipation.

I do not have any medical records from Park Nicollet.

Minnesota Statute Section 144.291, Subd. 2 (g) defines the term "Patient" for the purposes of sections 144.291 to 144.298:

(g) "Patient" means a natural person who has received health care services from a provider for treatment or examination of a medical, psychiatric, or mental condition, the surviving spouse and parents of a deceased patient, or a person the patient appoints in writing as a representative, including a health care agent acting

10400 Yellow Circle Drive, Suite 502
Minnetonka, MN 55343
Tel 952.253.6600 800.804.4008 Fax 952.253.3900
www.woodlakemedical.com



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according to chapter 145C, unless the authority of the agent has been limited by the principal in the principal's health care directive. Except for minors who have received health care services under sections 144.341 to 144.347, in the case of a minor, patient includes a parent or guardian, or a person acting as a parent or guardian in the absence of a parent or guardian.

Minnesota Statutes Section 144.341 states that notwithstanding any other provision of the law, any minor who is living separate and apart from parents or legal guardians, with or without the consent of the parent or guardian and regardless of the duration of said separated residence, and who is managing personal, financial affairs regardless of the source or extent of the minor's income, may give effective consent to the personal medical, dental, mental and other health services, and the consent of no other person is required.

Minnesota Statutes Section 144.345 states that a minor who claims to be able to give effective consent for the purpose of receiving medical, dental, mental or other health care services but who may not in fact do so, shall be deemed effective without the consent of the minor's parent or legal guardian if the person rendering the services relies in good faith upon the representation of the minor.

Minnesota Statutes Section 144.346 states that the professional may inform the parent or legal guardian of the minor patient of any treatment given or needed where, in the judgment of the professional, failure to inform the parent or guardian would seriously jeopardize the health of the minor patient.

Without a copy of the records of Park Nicollet, I am unable to determine if Dr. Farias did document that [redacted] was able to give independent effective consent, or on what basis she may have determined this.

While I do not have advanced training in medical ethics, I can comment on the general practice from the perspective of a Board-Certified obstetrician and gynecologist with decades of experience practicing in Minnesota and caring for both minors and adults.

In general, patients who declare themselves able to give effective consent are taken at face value unless circumstances warrant further questioning, i.e. if the patient was quite young, then this statement probably would not be accepted without additional documentation.

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Page 3

But typically, in the case of teenagers, a patient's statement that he or she is able to give independent and effective consent to medical treatment would be taken at face value and in good faith. This opinion is based on my experience in my practice, and my experience at the hospitals and clinics at which I have worked, as well as discussions with my professional peers both locally and nationally.

In my experience, in most medical practices, the front desk is determining who is fiscally responsible for payment of services rendered and obtaining consent for treatment. If a minor patient states he/she is responsible, the patient is then asked if he/she is living apart from parents and is responsible for his/her own livelihood. If the patient says yes, and has an address separate from a parent, the patient is deemed to be able to give his/her own consent.

I am asked to address the following questions:

1. *Whether statewide the medical, dental, mental and other health service providers interpret Minnesota Statutes § 144.341 to mean that a court order of emancipation is not required prior to providing non-emergency personal medical, dental, mental and other health services to a minor child under age 18 without parental consent?*

Whereas I cannot speak for every provider in Minnesota, in general yes, it is my experience that Minnesota providers interpret 144.341 to mean that a court order of emancipation is not required. We act on the good faith of the minor who states he is able to provide legal consent for treatment.

2. *If the answer to number 1 is no, then, has Park Nicollet violated a statewide standard of care by providing non-emergency medical services to a minor without parental consent and without a court order of emancipation?*

Not applicable, as the answer to number 1 is yes.

3. *Whether statewide parental access to a minor child's medical records is terminated after a medical service provider interprets Minnesota Statutes § 144.341 to mean that a court order of emancipation is not required prior to providing non-emergency personal medical services to a minor child under age 18 without parental consent?*

I read Minnesota Statute 144.291 to say that it is. The House Research document dated June 2013 entitled "Minor's Consent for Health Care" specifically provides:

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“Parents and guardians have access to their minor children’s medical records, unless the minor legally consents for services specifically listed under the Consent of Minors for Health Services statute (Minn. Stat. §§ 144.341-144.347). In that case, parents or guardians do not have access to the minor’s health care records without the minor’s authorization (Minn. Stat. § 144.291, subd. 2, para.(g)). However, if a health professional believes that it is in the best interest of the minor, the health professional may inform the minor’s parents of the treatment (Minn. Stat. § 144.346).”

Further, providers are enjoined by HIPPA regulations to not release records without consent of the patient.

4. *If the answer to number 3 is no, then, has Park Nicollet violated a statewide standard of care by denying a parent's access to a minor child's medical records without a court order of emancipation?*

Again, this question is not applicable, as the previous question is answered yes.

I will be happy to entertain any additional questions or concerns. You may reach me through Woodlake.

I declare that the information contained within this document was prepared by and is the work product of the undersigned, and is true to the best of my knowledge and information.

Sincerely,



Kenneth W. Crabb, M.D. FACOG
OB/GYN
MN License #22756

KC:jml