

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.

---

**DEFENDANT PARK NICOLLET  
HEALTH SERVICES'  
MEMORANDUM IN OPPOSITION  
TO PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT**

**INTRODUCTION**

Plaintiff's motion for summary judgment against Park Nicollet Health Services ("Park Nicollet") should be denied for three independent reasons. First, Park Nicollet is not a state actor and cannot be held liable under 42 U.S.C. § 1983. Second, Park Nicollet did not deprive Plaintiff of any recognized procedural due process rights. Third, Plaintiff has not, in any event, presented evidence showing that she is entitled to judgment as a matter of law. For each of these reasons, and as set forth in support of Park Nicollet's

motion to dismiss (Docket No. 42), Plaintiff's motion for summary judgment should be denied and Plaintiff's Verified Complaint should be dismissed with prejudice.

### **FACTUAL BACKGROUND**

Because Plaintiff has moved for summary judgment, the Court is required to consider the facts, and all reasonable inferences from the facts, in a light most favorable to Park Nicollet. *Thomas v. Heartland Employment Servs. LLC*, 797 F.3d 527, 529 (8th Cir. 2015) (reversing summary judgment). With that in mind, the Court must accept the following as true:

- In 2015 E.J.K. moved out of her mother's home and has not lived there since. (Docket No. 48 at ¶ 12.)
- Plaintiff is not paying for E.J.K.'s medical care or otherwise financially providing for E.J.K. (*Id.* at ¶ 31; Docket No. 47-1 at 4 of 12, ¶ 3.)
- Beginning no later than January 15, 2016, E.J.K. received treatment at Park Nicollet for gender dysphoria. (Docket No. 47 at Exhibit C.)
- Park Nicollet provided treatment to E.J.K. in accordance with World Professional Association for Transgender Health ("WPATH") guidelines. (*Id.*)

Beyond these facts, Plaintiff relies on speculation to support her motion. For example, Plaintiff has submitted a letter that was purportedly written by Dr. Kenneth W. Crabb. (Docket No. 47-1 at 9-12 of 12.) Dr. Crabb has not reviewed E.J.K.'s medical records. (*Id.* at 9 of 12.) While he is "unable to determine" whether and on what basis Park Nicollet obtained informed consent from E.J.K., Dr. Crabb admits that Park Nicollet did not violate any standard of care in treating E.J.K. (*Id.* at 10-11 of 12.)

Plaintiff herself provided a Declaration in which she speculates about E.J.K.'s consent for medical treatment. (Docket No. 48.) Plaintiff wonders whether E.J.K. "may have been subject to undue influence" by medical providers and whether she provided effective consent. (*Id.* at ¶ 43.) Plaintiff offers no evidence for either assertion. (*See generally* Docket No. 48.) Notwithstanding Plaintiff's speculation, E.J.K. has received medical care for gender dysphoria after discussing various treatment options, including risks and benefits, with her physicians. (Docket No. 63 at ¶¶ 5-7.) E.J.K. was not pressured or unduly influenced by any medical provider. (*Id.* at ¶ 8.)

### ARGUMENT

Plaintiff has moved for summary judgment even before the Court has determined whether she has asserted a viable claim against any of the Defendants. While no discovery has occurred, Plaintiff's Verified Complaint and summary judgment submission show that Park Nicollet is not a state actor and has not deprived Plaintiff of any recognized due process procedure. Even if some doubt existed as to whether Park Nicollet was a state actor and whether Plaintiff had been deprived of a due process, the Court should still deny Plaintiff's motion because Plaintiff has not presented evidence showing that she is entitled to judgment as a matter of law.

#### **A. Summary Judgment Standard.**

Summary judgment is not appropriate unless "there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A party may avoid summary judgment merely by submitting admissible evidence showing that a genuine issue of material fact exists. *Anderson v. Liberty Lobby, Inc.*, 477

U.S. 242, 248 (1986). A moving party cannot rely on speculation or conjecture, but must present admissible evidence. *Banks v. Deere*, 829 F.3d 661, 666 (8th Cir. 2016) (“mere allegations, unsupported by specific facts or evidence” beyond a party’s “own conclusions” are insufficient at summary judgment stage).

**B. Park Nicollet Is Not A State Actor.**

Section 1983 claims may only be maintained against state actors. *Hoyt v. St. Mary’s Rehab. Ctr.*, 711 F.2d 864, 865 (8th Cir. 1983). Absent a plausible state actor allegation against Park Nicollet, Plaintiff’s claim should be dismissed. *Lubin v. Crittenden Hosp. Assoc.*, 713 F.2d 414, 415 (8th Cir. 1983).

Plaintiff concedes that Park Nicollet is a Minnesota non-profit corporation that provides medical services. (Docket No. 1 at ¶ 10.) Because “only state actors can be liable under Section 1983,” *Youngblood v. Hy-Vee Foods Stores, Inc.*, 266 F.3d 851, 855 (8th Cir. 2001), Plaintiff’s claim against Park Nicollet fails.

Plaintiff never attempts to establish that Park Nicollet is a state actor. Instead, Plaintiff simply asserts that “government approved payments are made or have been made to . . . Park Nicollet.” (Docket No. 46 at 32 of 42.) The only evidence for that assertion is Plaintiff’s Declaration, where Plaintiff claims that E.J.K. told Plaintiff that St. Louis County was paying for medical services provided to E.J.K. (Docket No. 48 at ¶ 31.)

Plaintiff provides no legal support for the notion that receiving government funding converts a private corporation into a state actor. (Document 46 at 32-41 of 42.) And the law is very clear that it does not. *See, e.g., Alexander v. Pathfinder, Inc.*, 189

F.3d 735, 740 (8th Cir. 1999). Nor does “extensive governmental regulation and licensing” convert a private entity into a state actor. *Nichols v. Metro. Center for Indep. Living, Inc.*, 50 F.3d 514, 518 (8th Cir. 1995). Even a private entity that “depends upon government for nearly all its funding” and “performs uniquely public functions” is not a state actor. *Id.*

Plaintiff’s inability to show that Park Nicollet is a state actor requires the Court to deny her motion. *Hoyt*, 711 F.2d at 865 (“We agree with the District Court that there is no state actor, so that [plaintiff’s] constitutional and § 1983 claims must fail”). Because Park Nicollet is not a state actor, the Court lacks jurisdiction to hear Plaintiff’s Section 1983 claim against Park Nicollet. *Alexander*, 189 F.3d at 740.

**C. Plaintiff Was Not Deprived Of Procedural Due Process.**

Plaintiff’s motion would fail regardless of whether Park Nicollet was a state actor. Under Minn. Stat. § 144.341, E.J.K. has the ability to give consent for medical care. Plaintiff has no constitutional right, on these facts, to any additional process concerning E.J.K.’s ability to consent to medical care.

Patients over age 18 may give consent for treatment and parents of minors ordinarily may give consent for their children. Minn. Stat. § 144.341 establishes who may provide consent when a minor no longer lives with, and is financially independent from, her parent. In that circumstance, the minor herself may give effective consent. Minn. Stat. § 144.341 (2016).

Plaintiff does not dispute that E.J.K. lives apart from and is financially independent of Plaintiff. (Docket No. 48 at ¶¶ 12, 31.) Therefore, E.J.K. is permitted to give consent for her own medical treatment. Minn. Stat. § 144.341 (2016).

In response, Plaintiff attempts to dispute whether E.J.K.'s consent was "effective." While "effective consent" simply means consent "given by one who has the capacity to give it,"<sup>1</sup> Plaintiff contends that Minn. Stat. § 144.341 requires a medical provider to evaluate a minor's capacity and competency to give consent. That is no different from a physician's obligation to ensure that any patient or guardian -- regardless of age -- is able to provide knowing and voluntary consent. (Docket No. 47-1 at 10 of 12 ("In general, patients who declare themselves able to give effective consent are taken at face value unless circumstances warrant further question . . .").) Nothing in Minn. Stat. § 144.341 suggests that medical care providers must hold a hearing or develop a legal process to determine consent, or that a medical care provider must permit a parent who is not supporting a minor to contest the minor's consent.

Plaintiff's suggestion that medical providers must obtain a court's determination of capacity to give effective consent, even for patients who are legally able to consent by statute, would apply to every medical encounter in Minnesota and radically change medical care. Adopting that suggestion would require a court hearing before every medical appointment in order to determine mental capacity to give consent. This is not constitutionally required, and Plaintiff offers no authority to the contrary.

---

<sup>1</sup> Restatement (Second) of Torts § 892A, cmt b (Am. Law Inst. 1965).

Plaintiff also asserts that Minnesota has not adopted the “mature minor doctrine.” (Docket No. 46 at 36 of 42.) Under that doctrine, minors may provide consent for certain types of medical treatment. *See, e.g., Cardwell v. Bechtol*, 724 S.W.2d 739, 745 (Tenn. 1987).

Plaintiff is incorrect about mature minors under Minnesota law. Minn. Stat. § 144.341 appears in a section of the Minnesota Statutes that addresses “consent of minors for health services.” Minn. Stat. § 144.341-.347 (2016). While the Minnesota Supreme Court may not have had occasion to discuss the mature minor doctrine, like the Tennessee Supreme Court did in *Cardwell*, the Minnesota legislature has expressly identified situations under which minors may consent to medical treatment even though they remain minors under the law for other purposes. *See, e.g., Minn. Stat. § 144.341* (2016).

Plaintiff’s effective consent and mature minor arguments miss the mark because the United States Constitution does not require any particular process for permitting a 17-year-old to make her own medical decisions. “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. Schools*, 655 F.3d 811, 817 (8th Cir. 2011) (internal quotation omitted). While parents have a liberty interest in being free from undue governmental interference in the care of their children, *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923), that interest is strongest when parents are actively involved in the support, education and care of their children. *Meyer*, 262 U.S. at 400

(1923) (recognizing that duties of parents correspond to right of control); *Wisconsin v. Yoder*, 406 U.S. 205, 233 (1972) (discussing parent rights for “those who nurture [a child] and direct his destiny”). Even then, a parent’s liberty interest is “no more weighty” than a competent minor’s constitutional rights because “[m]inors, as well as adults, are protected by the Constitution and possess constitutional rights.” *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52, 75 (1976).

Plaintiff’s procedural due process argument fails first because the state is not compelling or preventing anything. *See Doe v. Irwin*, 615 F.2d 1162, 1168 (6th Cir. 1980). “Every 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 want them to engage in.” *Reardon v. Midland Cmty. Schools*, 814 F. Supp.2d 754, 770 (E.D. Mich. 2011). Here, E.J.K. has not been compelled or prevented by any state action from engaging in any particular activity. To the contrary, E.J.K. has simply made her own medical decision after living apart from her parent and supporting herself financially for nearly two years. *See J.S. ex rel. Snyder v. Blue Mountain School Dist.*, 650 F.3d 915, 934 (3d Cir. 2011) (government “in no way forced or prevented J.S.’s parents from reaching their own disciplinary decision, nor did its actions force her parents to approve or disapprove of her conduct”).

Beyond that, Plaintiff’s constitutional argument fails because, on the facts in this case, Plaintiff is not entitled to any additional process concerning E.J.K.’s medical decisions. If E.J.K. moves in with Plaintiff or Plaintiff manages E.J.K.’s finances again,

then Minn. Stat. 144.341 will no longer apply. Beyond that, Minnesota law already provides various procedures for parents to compel a minor to return home or to have a minor over age 16 live independently but under supervision. Minn. Stat. §§ 260C.141, 260C.201, subd.1 (2016); *see also* Docket 40 at 25-26 of 28. Plaintiff does not claim to have exhausted (or even attempted) any of these options. Rather, Plaintiff has simply allowed E.J.K. to live independently and then, once Plaintiff learned that E.J.K. was making decisions that Plaintiff disagrees with, Plaintiff suddenly claimed a constitutional right to prevent E.J.K. from making her own medical decisions. *See Anspach ex rel. Anspach v. City of Philadelphia, Dep't of Pub. Health*, 503 F.3d 256, 268 (3d Cir. 2007) (“[t]he Constitution does not protect parental sensibilities, nor guarantee that a child will follow their parents’ moral directives”). Because Plaintiff had (and has) statutory means for avoiding the supposed constitutional violation she complains about, the Court should deny her motion for summary judgment and dismiss this case. *Three Affiliated Tribes of Fort Berthold Reservation v. Wold Eng’g, P.C.*, 467 U.S. 138, 158 (1984) (“It is a fundamental rule of judicial restraint, however, that this Court will not reach constitutional questions in advance of the necessity of deciding them”); *Cochenour v. Cochenour*, 888 F.2d 1244, 1245-46 (8th Cir. 1989) (“We need not reach constitutional issues unless required to do so to decide the case”).

**D. Plaintiff Would Not Be Entitled To Summary Judgment In Any Event.**

The Court can deny Plaintiff’s motion without deciding whether Park Nicollet is a state actor and without deciding the boundary between a parent’s liberty interest in raising her child and a minor’s constitutional right to make her own medical decisions.

That is because Plaintiff has not presented evidence showing that she is entitled to summary judgment. Summary judgment is only appropriate when “there can be but one reasonable conclusion as to the verdict.” *Anderson*, 477 U.S. at 250. “If reasonable minds could differ as to the import of the evidence,” summary judgment is not appropriate. *Id.*

Here, Plaintiff concedes that E.J.K. is able to consent to her own medical treatment but questions whether E.J.K. has provided “effective consent” in this case. (Docket No. 48 at ¶ 42.) Plaintiff offers no evidence that E.J.K. failed to provide effective consent. Instead, she simply expresses concern that Park Nicollet provided care without first obtaining effective consent. (*Id.*) But Plaintiff’s speculation about the consent process that took place within the clinic does not meet her burden to present admissible evidence sufficient to require judgment as a matter of law. Fed. R. Civ. P. 56(c); *Handeen v. Lemaire*, 112 F.3d 1339, 1346 (8th Cir. 1997) (moving party must meet “prefatory burden contemplated by Rule 56” before burden shifts to non-moving party to identify disputes regarding material facts). And, in fact, E.J.K. consented to medical care after discussing various treatment options, including benefits and risks with her physicians. (Docket No. 63 at ¶¶ 7-8.)<sup>2</sup> For this additional reason, Plaintiff’s motion should be denied.

---

<sup>2</sup> This argument need not be addressed if the Court finds that Park Nicollet is not a state actor and/or that Plaintiff’s constitutional rights were not violated. To be clear, Park Nicollet asserts that this Court lacks jurisdiction over Plaintiff’s claims against Park Nicollet and that Plaintiff has failed to state a claim upon which relief can be granted. No discovery is necessary for Plaintiff’s claims against Park Nicollet to be dismissed.

**CONCLUSION**

Plaintiff's motion fails because Park Nicollet is not a state actor and has not compelled or prevented Plaintiff from doing anything. Beyond that, Plaintiff has presented no admissible evidence calling into question whether E.J.K. provided effective consent for medical treatment. The record shows that Plaintiff has failed to provide a home to E.J.K. and has failed to provide financially for E.J.K. Park Nicollet respectfully requests that the Court deny Plaintiff's motion for summary judgment and instead dismiss Plaintiff's Verified Complaint with prejudice.

Date: January 5, 2017

LARSON • KING, LLP

By: s/ David M. Wilk  
David M. Wilk (#222860)  
Stephanie Chandler (#0395303)  
2800 Wells Fargo Place  
30 East Seventh Street  
St. Paul, Minnesota 55101  
Telephone: (651) 312-6500  
dwilk@larsonking.com  
schandler@larsonking.com

**ATTORNEYS FOR DEFENDANT  
PARK NICOLLET HEALTH  
SERVICES**

1579236

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

---

Anmarie Calgaro,

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.

---

**LR 7.1(f) and (h) WORD  
COUNT COMPLIANCE CERTIFICATE  
REGARDING DEFENDANT PARK  
NICOLLET HEALTH SERVICES'  
MEMORANDUM IN OPPOSITION  
TO PLAINTIFF'S MOTION  
FOR SUMMARY JUDGMENT**

I, David M. Wilk, certify that Defendant Park Nicollet Health Services' Memorandum in Opposition to Plaintiff's Motion for Summary Judgment 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 2,629 words.

Date: January 5, 2017

LARSON • KING, LLP

By: s/ David M. Wilk

David M. Wilk (#222860)

Stephanie Chandler (#0395303)

2800 Wells Fargo Place

30 East Seventh Street

St. Paul, Minnesota 55101

Telephone: (651) 312-6500

dwilk@larsonking.com

schandler@larsonking.com

**ATTORNEYS FOR DEFENDANT  
PARK NICOLLET HEALTH  
SERVICES**

1579783