

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Anmarie Calgaro,

Civil Action No.: 0:16-cv-03919-PAM-
LIB

Plaintiff,

vs.

St. Louis County; Linnea Mirsch, individually and in her 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.,

**REPLY MEMORANDUM OF LAW IN
SUPPORT OF DEFENDANT
FAIRVIEW HEALTH SERVICES'
MOTION TO DISMISS PURSUANT TO
FED. R. CIV. P. 12(b)(1) AND FED. R.
CIV. P. 12(b)(6)**

Defendants.

Defendant Fairview Health Services ("Fairview") respectfully submits this reply memorandum of law in support of its motion under Fed. R. Civ. P. 12(b)(1) and 12(b)(6) to dismiss the claims made against Fairview in the Complaint.

After maintaining that Fairview was a state actor due to its receipt of public funds [Doc. 1, ¶ 198; Doc. 46, at 29], Plaintiff now pivots to a new theory that Fairview has, through legislatively authorized quasi-judicial action, terminated her parental rights to E.J.K. f.k.a. J.D.K. (“E.J.K.”). Plaintiff’s new legal theory is unsupported, both by the facts she alleged and the text of Minn. Stat. § 144.341. Plaintiff’s legal conclusions are not factual allegations and are entitled to no deference as this Court addresses Fairview’s motion to dismiss. *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949–50 (2009). Even accepting the truth of the allegations, the facts only show that Fairview allegedly provided medical services to a consenting, self-supporting 17-year-old minor who was living outside of her parents’ home. There is no constitutional violation implicated by such facts.

ARGUMENT AND ANALYSIS

Plaintiff’s new theory suffers from two legal flaws. First, in Minnesota, emancipation is an act of the parent, not a judicial act. Therefore, as a matter of law Fairview did not “emancipate” E.J.K. because her status is determined by Plaintiff’s actions, not Fairview’s actions. Second, Fairview’s alleged provision of medical services in accordance with E.J.K.’s consent was not a quasi-judicial proceeding and has no determinative effect on Plaintiff and E.J.K.’s relationship.

I. IF ANYONE EMANCIPATED E.J.K., IT WAS PLAINTIFF—NOT FAIRVIEW.

Plaintiff repeats her mantra that there is no specially enacted statutory procedure in Minnesota for bringing a petition related to emancipation. But the

absence of statutory law does not mean the absence of law. Minnesota is a common law jurisdiction. See generally *Dutcher v. Culver*, 24 Minn. 584, 618–19 (1877); *Dahlin v. Kroenig*, 784 N.W.2d 406, 409 (Minn. App. 2010), *aff'd*, 796 N.W.2d 503 (Minn. 2011). Therefore, Minnesota common law provides the rules of decision related to questions of emancipation even though there is no statute on point. E.g., *Taubert v. Taubert*, 103 Minn. 247, 248–49, 114 N.W.763, 764 (1908). Given the case law that Plaintiff herself has cited, Plaintiff cannot complain that Minnesota lacks substantive law on this issue.¹

The problem for Plaintiff is that the substantive rules do not favor her. As explained in Fairview's opposition to Plaintiff's motion for summary judgment [Doc. 59, at 7–13], infancy and emancipation are statuses at common law and do not arise out of judicial acts. *In re Davidson's Will*, 223 Minn. 268, 272, 26 N.W.2d 223, 225 (1947) (stating that minority is a status under the law). Emancipation, in particular, arises as a result of the private reordering of the relationship between a parent and her minor child. *In re Fiihr*, 289 Minn. 322, 326, 184 N.W.2d 22, 25 (1971) (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. 7, 9, 2 N.W.2d 149, 150 (1942)); *Taubert*, 103 Minn. at 248–49, 114 N.W. at 764 (same).

¹ Plaintiff might be complaining of the absence of a procedural statute. As with any other civil action, in the absence of specialized procedures, the claims that Plaintiff could assert before a Minnesota state court would be governed by the state courts' general procedural rules. Minn. R. Civ. P. 1.

In this regard, emancipation is analogous to contract formation, in which private parties create or modify rights with respect to one another. The formation of a contract occurs outside of the courtroom, but may need to be resolved as a question of fact when 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 is not itself a judicial act. *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 160, 98 S. Ct. 1729, 1735 (1976). Nor is it the result of a healthcare provider rendering medical services.

Thus, cases touching on emancipation merely recognize an already-existing change of status, and whether it occurred 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). 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 v. Harvey*, 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. 238, 240, 154 N.W. 1097, 1907–98 (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 domicile 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.

Here, E.J.K.'s emancipation, if it occurred, was effected by the conduct of Plaintiff and of E.J.K. Fairview did not emancipate E.J.K., nor did it terminate Plaintiff's parental rights. It only allegedly provided medical services. Plaintiff's parental rights were not altered by Fairview's alleged conduct. If Plaintiff had released her parental rights by emancipating E.J.K., then the rights were already gone. If Plaintiff did not release her parental rights, then they remain in existence. But the present status of the relationship is not a federal question.

II. PROVIDING MEDICAL SERVICES IS NOT A QUASI-JUDICIAL ACT.

Plaintiff argues that Fairview quasi-judicially adjudicated E.J.K.'s emancipation by allegedly providing medical services consistent with E.J.K.'s consent to such services. Plaintiff argues that in doing so, Fairview exercised a “traditional public function” and therefore may be treated as a state actor. The flaw in Plaintiff's reasoning is that Fairview has not adjudicated her rights. Accepting the allegations as true, Fairview merely provided E.J.K. with medical services.

A. Plaintiff Misinterprets the Effect and Scope of Minn. Stat. § 144.341.

Pursuant to Minn. Stat. § 144.341 (2016), a minor may give effective consent for medical treatment if the minor (1) “is living separate and apart from parents or legal guardian,” and (2) “is managing personal financial affairs.” The consent a minor gives “shall be deemed effective without the consent of the minor’s parent or legal guardian, if the person rendering the service relied in good faith upon the representations of the minor.” Minn. Stat. § 144.345 (2016).

Assuming the truth of the facts in the Complaint, E.J.K. was living apart from Plaintiff and supporting herself. [Doc. 1, ¶¶ 53–54.] Therefore, Minn. Stat. § 144.341 is satisfied and Fairview had a good-faith basis to rely on E.J.K.’s representations: the truth of those representations. In sum, under Minnesota law, E.J.K. is deemed to have given effective consent and Fairview could lawfully provide E.J.K. the alleged medical services without Plaintiff’s consent.

Plaintiff contends that when Fairview provided the medical services the statute authorized, Fairview engaged in decision-making tantamount to “adjudication.” But this reads too much into the statute. First, Plaintiff’s construction of the statute as a two-step analysis is ungrammatical and nonsensical.² [See Doc.

² Plaintiff’s construction of the statute also directly contradicts Plaintiff’s allegation that Fairview emancipated E.J.K. when it provided the alleged medical services E.J.K. consented to. As Plaintiff observes, Minn. Stat. § 144.341 applies “[n]otwithstanding any other provision of law.” [Doc. 65, at 21.] As a result, Plaintiff correctly states that the provision of medical services consistent with medical consent authorized by Minn. Stat. § 144.341 does not implicate a common-law emancipation. *Id.* Plaintiff’s self-rebutting analysis necessarily calls into question

65, at 18–19.] Under the statute the “minor . . . may give effective consent.” Minn. Stat. § 144.341. Thus, the “minor” who meets the criteria identified in the statute is the subject of the statutory sentence and is the person who acts to “give effective consent.” *Id.* The healthcare provider is mentioned only obliquely, if at all, by reference to the fact that the minor is empowered to consent to medical services. *Id.* The plain language of the provision empowers the “minor,” not the medical provider.

Second, Plaintiff exaggerates the scope of the statute, which only affords a minor the capacity to consent to medical services under specifically identified circumstances. The statute has no other effect on the relationship between the parent and the minor and only applies during a time in which the minor meets the two statutory prerequisites. If the minor moves in with the parent, for example, the minor would no longer be able to give effective consent. See Minn. Stat. § 144.341. In sum, the statute has not terminated Plaintiff’s parental rights to E.J.K. If Plaintiff wants to end the effect of the statute, she need only persuade E.J.K. to move home with her or to permit Plaintiff to manage E.J.K.’s financial affairs (or persuade the State of Minnesota to compel E.J.K. to do so). The statute in no way empowers Fairview or any other healthcare provider to pronounce that E.J.K. is emancipated.

Plaintiff’s premise that Fairview’s alleged provision of medical services emancipated E.J.K.

B. The Invocation of Statutory Rights and Procedures Is Not an “Adjudication.”

The State of Minnesota has decided to grant minors who are living independently of their parents the ability to receive medical services. E.J.K. and Fairview’s reliance on that permission does not render the provision of medical services an act of the State of Minnesota. Instead, “[a]ction taken by private entities with the mere approval or acquiescence of the State is not state action.” *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 52, 119 S. Ct. 977, 986 (1999). “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 Supreme Court specifically rejected the argument that reliance on state-enacted procedures constituted a delegation of the traditional sovereign function of adjudication in *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 161–63, 98 S. Ct. 1729, 1736–37 (1976). In *Flagg Bros.*, 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.

Minn. Stat. § 144.341 likewise provides recognition to the private reordering of the relationship between the parent and child by providing a minor who is living independently to seek and obtain medical services. However, the statute does not bar the courthouse door to a parent who seeks to reestablish the relationship. Moreover, although a healthcare provider is afforded some room for error by Minn. Stat. § 144.346, the healthcare provider is subject to judicial scrutiny. In sum, like the statute at issue in *Flagg Bros.*, Minn. Stat. § 144.341 does not delegate the sovereign power to resolve disputes. Nor does it make a healthcare provider a state actor for purposes of Section 1983.

C. Fairview’s Acceptance of E.J.K.’s Effective Consent Pursuant to Minn. Stat. § 144.341 Lacks the Hallmark of 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 has 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.*, 436 U.S. at 160, 98 S. Ct. at 1735 (noting the sovereign role in dispute resolution, albeit recognizing that the role is not exclusive).³

In the federal context, whether a proceeding is quasi-judicial such that it can enjoy preclusive effect turns on the procedures used in arriving at the decision. *Johnson v. Vilsack*, 833 N.W.2d 948, 953–54 (8th Cir. 2016). In order for a decision

³ Nevertheless, if Plaintiff 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). Plaintiff’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).

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 N.W.2d 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).

As a result, it is the very absence of the procedures Plaintiff now seeks through this action that demonstrates why Fairview’s alleged provision of medical services was not a quasi-judicial adjudication. Assuming that Fairview concluded that it could lawfully provide medical services pursuant to Minn. Stat. § 144.341, Fairview’s conclusion would not be binding on Plaintiff, on E.J.K., or on a Minnesota state court.

If the Plaintiff petitions a juvenile court to declare E.J.K. a runaway and return her to Plaintiff’s custody, the fact that E.J.K. received medical services would not tie the hands of the juvenile court. See *generally* Minn. Stat. § 260C.141, subd. 1(a) (2016) (permitting “any reputable person” to file a petition that would establish the court’s jurisdiction over a child in need of protection or services); Minn. Stat.

§ 260C.007, subd. 28 (2016) (defining “runaway” as “an unmarried child under the age of 18 years who is absent from the home of a parent or other lawful placement without the consent of the parent, guardian, or lawful custodian.”). Nor would the fact that E.J.K. received medical services from one healthcare provider require another healthcare provider to render medical services to her.

Indeed, the possibility of a court action is implied by the statute, which requires considering a healthcare provider’s “good faith” in the event that the 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.”

In sum, Plaintiff 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, the private violation of rights is a matter for state tort law.⁴ 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. Plaintiff has failed to state a claim under Section 1983 as against Fairview, and the Court lacks subject matter jurisdiction to hear the claim against Fairview.

⁴ Incidentally, Minnesota has declined on public policy grounds to recognize a tort for interference with custodial rights. *Larson v. Dunn*, 460 N.W.2d 45–46 (Minn. 1990).

CONCLUSION

Fairview has not adjudicated Plaintiff's parental rights and has not performed a state action. Even accepting the allegations in the Complaint as true, the only thing that Fairview has done is provide E.J.K. with medical services. Unless Plaintiff has emancipated E.J.K.—an act she cannot attribute to Fairview—Plaintiff retains her parental rights and may seek to invoke and enforce them in Minnesota state court.

Accordingly, Plaintiff has failed to state a claim under Section 1983 and this Court lacks subject matter jurisdiction over the claims against Fairview. Fairview respectfully requests that the Court grant its motion and dismiss Plaintiff's claims against it.

Lind, Jensen, Sullivan & Peterson
A Professional Association

Dated: January 12, 2017

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**LR 7.1(f) WORD COUNT
COMPLIANCE CERTIFICATE**

Defendants.

I, João C.J.G. de Medeiros, certify that the Reply Memorandum of Law in Support of Defendant Fairview Health Services' Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) and Fed. R. Civ. P. 12(b)(6) complies with the word limits Local Rule 7.1(f) and with the type-size limit of LR 7.1(h). I further certify that, in the preparation of this memorandum, I used Microsoft Word's Office 2013, and that this work processing program has been applied specifically to include all text, including headings, footnotes, and quotations in the following word count. I further certify that the above-referenced memoranda contains 3,162 words, and is set in a proportional font.

Lind, Jensen, Sullivan & Peterson
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Dated: January 12, 2017

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