

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

ANMARIE CALGARO,

Case No. 16-cv-3919 (PAM/LIB)

Plaintiff,

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 COUNTY SCHOOL
DISTRICT; and J.D.K.,

**DEFENDANT E.J.K.’s
REPLY MEMORANDUM OF LAW
IN SUPPORT OF MOTION TO DISMISS**

Defendants.

I. Calgario Has Failed to State a Claim Against Any Defendant.

According to Calgario, “E.J.K. is a defendant party because he [sic] has used the assertion of emancipation based upon a non-adjudicated . . . ‘letter of emancipation’ to obtain services without notice to his [sic] mother.” (Pl. Mem. At 7-8.) Neither this statement, nor anything else in Calgario’s memorandum in opposition to E.J.K.’s motion to dismiss, shows that she has any claim against E.J.K.

Even without stating any claim against E.J.K., Calgario requests relief that would have a direct and serious impact on E.J.K.'s ability to obtain medical and educational services. That is because – in her own words – Calgario seeks an injunction preventing any of the other Defendants “from providing any additional medical, educational, or other services to the minor children of Ms. Calgario,” including E.J.K. (*Id.* at 7.) For the reasons set forth below and in Defendants’ previous briefs, such relief is unwarranted.

II. Calgario Fails to Explain How She Has Been Deprived of Any Constitutionally-Protected Rights.

Calgario makes much of the fact that the Constitution guarantees certain parental rights. But that is not the issue. Rather, the question now before the Court is whether Calgario’s Complaint identifies any constitutionally-protected interest that has been infringed, or any state action that compelled or prohibited Calgario from exercising some specific cognizable right. Even if she could show state action – which she cannot – Calgario cannot show that any of the Defendants compelled or prohibited any action on Calgario’s part. In any event, Calgario’s parental rights are not plenary, and do not trump E.J.K.’s own constitutional and statutory rights to make her own medical decisions. (*See* E.J.K. Initial Mem. at 14-19.)¹

III. Calgario Mischaracterizes Minn. Stat. Section 144.341.

Calgario mischaracterizes Minn. Stat. Section 144.341, which has no direct bearing on this proceeding. Nothing in that statute requires – or even contemplates – that a

¹ To the extent Calgario lacks parental influence over E.J.K., that is a result of family dynamics, including Calgario’s own past actions and decisions. Had Calgario wanted to assert parental authority, there have been numerous opportunities for her to do so. (*See e.g.*, E.J.K. Initial Mem. at 19-20.)

medical provider is to determine whether a minor seeking medical services is emancipated, or to adjudicate the minor's "capacity" to give effective consent. On the contrary, the statute identifies two factors: 1) the minor must be "living separate and apart from parents;" and 2) the minor must be "managing [her] personal financial affairs." Even as to these factors, the statute makes clear that a medical provider need not undertake any independent inquiry, and can instead rely on the minor's representations. *See* Minn. Stat. Section 144.345 (providers are entitled to rely "in good faith upon the representations of the minor.") In any event, Calgaro does not dispute that both of the factors had been met at the time E.J.K. received medical services, and there is nothing in Calgaro's pleading to suggest otherwise.

Dated: January 12, 2017

Respectfully submitted,

s/ Michael A. Ponto

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ST. LOUIS COUNTY SCHOOL
DISTRICT; and J.D.K,

**LR 7.1(f) CERTIFICATE OF
COMPLIANCE**

Defendants.

I, Michael A. Ponto, certify that Defendant E.J.K.'s Reply Memorandum of Law in Support of Motion to Dismiss complies with Local Rule 7.1(f).

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.

I further certify that the above referenced memorandum contains 488 words, exclusive of the caption and signature block.

Dated: January 12, 2017, 2016

s/ Michael A. Ponto

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