

STATE OF MINNESOTA
COUNTY OF BROWN

IN DISTRICT COURT
FIFTH JUDICIAL DISTRICT

Court File No: JV-09-68

In the Matter of the Welfare of the Child of:
Colleen Hauser and Anthony Hauser

FINAL ARGUMENT

TO: Brown County Attorney, P.O. Box 428 New Ulm, MN 56073, Thomas Sinas, Robins, Kaplan, Miller & Ciresi, 2800 LaSalle Plaza, 800 LaSalle Ave., Minneapolis, MN 55402-2015, Calvin Johnson, P.O. Box 3665, Mankato, MN 56002-3665.

Final Argument by Philip J. Elbert, attorney for Daniel Hauser

There is no dispute that when parents fail to take action when medical treatment is needed for their child, the State has a legitimate interest in intervening in that situation to assure that appropriate medical care is provided to the child. There is also no dispute that when parents look only to spiritual means of providing health care for a child, the State can also intervene in those cases to provide non-spiritual medical care. Lundman vs. McKown, 530 N.W.2d 807 (Minn. Ct. App. 1995) citing State of Tennessee vs. Hamilton, 657 S.W.2d 425 (Tenn. Ct. App. 1983).

The parents in this case did not fail to act nor did they rely solely on spiritual treatment methods for Daniel's medical care. The facts of this case demonstrate that Daniel's parents affirmatively acted after getting information from multiple sources and their actions were based upon being presented with an unfair choice of two bad scenarios. Daniel's parents were faced with the following two choices:

Choice one

- require Daniel to undergo chemotherapy and radiation, (with its associated risk of death);
- violate their religious beliefs and those of Daniel;
- expose Daniel to the following, non-exclusive, list of possible complications:
 - a. secondary cancers such as non-Hodgkin's lymphoma, lung cancer, and leukemia;
 - b. heart disease;
 - c. hypothyroidism;
 - d. infertility;
 - e. emotional problems.

Choice two

- use a holistic therapy, (with its associated risk of death);
- which is consistent with their religious beliefs;
- and is believed to effective by professionals in the medical field.

The Court is now in a position of determining if the Hauser's made the right choice. In essence, the Brown County District Court is acting as a Court of Appeals in this regard. Because, the Brown County Court must rule on the appropriateness of the choice made by the Hausers. This issue must be viewed and decided by similar standards of review as those in other appellate proceedings.

The lowest standard of review is Rational Basis. Under this standard, the decision will be affirmed if there is any rational basis for the decision. Daniel asks this Court to apply this minimum standard of review to the Hausers' choice because "...great deference must be accorded a parent's choice as to the mode of medical treatment...." In re Hofbauer, 393 N.E. 2d 1009, 1013 (N.Y. Crt App. 1979). If the Court finds that the Hausers did in fact have a rational basis for their choice, then the County's Petition must be dismissed. If the Court finds that there is no rational basis for the choice made by the parents, then the Court must apply the Clear and Convincing standard, an intermediate standard, to the request of the County.

This Court heard the testimony from the County's witnesses verifying the above-cited possible side effects from radiation and chemotherapy. The County's doctors continually repeated the cure rate of Daniels' cancer to be 90-95%. This was repeated until being cross-examined by defense counsel where the truth of the percentage came out. The true cure rate is actually "upwards to" 80, 90, or 95%. The County's doctors simply do not know what the cure rate for Hodgkin's lymphoma is in general or for Daniel in particular. But instead of stating this openly and clearly, they continued to cite to the most positive statistics. If the doctors do not know the cure rates, can we really say that the Hausers' decision is "wrong"?

The defense called several witnesses who had significant expertise in the field of medicine. These witnesses testified under oath as to the cancer curative effects of the Hausers' holistic treatment of Daniel. The witnesses had years of experience, published works, and had been involved in medical studies. They all gave credible testimony as to the reasonableness of the Hausers' treatment choice. If these learned professionals in the field of medical science think that the Hausers are pursuing a reasonable course of treatment, can we really say that the Hausers' decision is "wrong"?

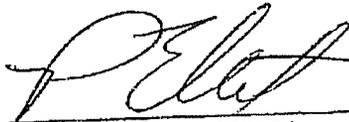
Unfortunately for the Hausers, they were confronted with a true "Morton's Fork" in that they were faced with a choice between two bad alternatives. Either choice they made, may lead to Daniels death. So, when faced with that grim choice, the Hausers chose to 1) reject the side effects of chemotherapy and radiation, 2) follow their religious beliefs and 3) follow the reasonable expectations of holistic therapies.

This Court's task is not to decide what choice it would make. It is not the role of this Court to decide what choice a reasonable person would make. The role of this Court is to determine if the Hausers' choice had any rational basis. And it did. It was the Hausers who met with the doctors,

discussed options, weighed the risks and benefits of treatment, talked to Daniel, investigated alternatives, balanced their faith beliefs, and continued to seek medical care. This conduct by the Hausers put them in the best place to make a decision about Daniel's care. The Hausers' decision was rational. The Hausers did not fail to act nor did they rely solely on spiritual cures. They made their decision based upon all factors at their disposal and the decision included objective, active, and affirmative efforts. The Court should honor that decision and dismiss the CHIPS Petition.

Respectfully submitted,

Dated: 5/12/09



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