

State of Minnesota

District Court

Brown County

Judicial District:

Fifth

Court File Number:

JV-09-58

Case Type:

Juvenile

In the Matter of the Welfare of the Child(ren) of:
Colleen Hauser and Anthony Hauser

Notice of Filing of Order

X Parent

Legal Custodian

Parent

Legal Custodian

PLEASE TAKE NOTICE THAT on May 27, 2009 the attached Order was filed in the above-entitled matter.

1. **Effective Date.** The Order shall remain in full force and effect until the first occurrence of one of the following: issuance of an inconsistent order; the order ends pursuant to the terms of the order; or jurisdiction of the juvenile court is terminated. Unless otherwise ordered, an order stated on the record is effective immediately.
2. **Relief from Order.**
 - a. **Clerical Mistakes.** Pursuant to Juvenile Protection Rule 46.01, clerical mistakes in an order arising from oversight or omission may be corrected by the court at anytime upon its own initiative or upon motion of any party.
 - b. **Mistakes, Inadvertence, Excusable Neglect, Newly Discovered Evidence, Fraud.** Pursuant to Juvenile Protection Rule 46.02, upon motion made within ninety (90) days of the filing of a final order of the court, the court may relieve a party or the party's legal representative from a final order or proceeding and may order a new trial or grant such other relief as may be just for any of the following reasons:
 - Mistake, inadvertence, surprise, or excusable neglect;
 - Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial;
 - Fraud (whether denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
 - The judgment is void; or
 - Any other reason justifying relief from the operation of the order
3. **Petition to Invalidate Under ICWA.** Pursuant to Juvenile Protection Rule 46.03, any Indian child who is the subject of any action for foster care placement or termination of parental rights under state law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may file with the court and serve upon the parties a Petition to Invalidate such action upon a showing that such action violates the Indian Child Welfare Act, 25 U.S.C. § 1911-1914 1978. The form and content of the petition shall be in writing and shall be governed by Rule 33.
4. **Appeal.** Pursuant to Juvenile Protection Rule 47, an appeal may be taken by an aggrieved person from a final order of the juvenile court affecting a substantial right of the aggrieved person, including but not limited to an order adjudicating a child to be in need of protection or services or neglected and in foster care. **Any appeal shall be taken within thirty (30) days of the filing of the order.** The procedures for filing and serving an appeal are set forth in Juvenile Protection Rule 47. Pursuant to Rule 47.03, the service and filing of a Notice of Appeal does not stay the order of the trial court. The appellate court may in its discretion, and upon application, stay the trial court order.

Dated: May 27, 2009

By: Carol Melick
Court Administrator
[Signature]
Deputy Clerk

FILED 5/27/09
NO. JV-09-58
Carol Melick, Court Administrator
Brown County, Minnesota

C: J. Olson, County Attorney
P. Elbert, Attorney
C. Johnson, Attorney
T. Sinas, Attorney
S. Oliver, GAL
S. Helget, BCFS
R. Swenson, BCFS
Dr. Bostrom, Children's Hospitals and Clinics

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF BROWN

FIFTH JUDICIAL DISTRICT

In the Matter of the Child of:

Colleen Hauser and Anthony Hauser,

ORDER

Parents.

Court File No. JV-09-068

The above-entitled matter came on for hearing before the undersigned Judge of District Court on May 26, 2009 at the Brown County Courthouse in New Ulm, Minnesota.

Appearances were:

Phil Elbert	Attorney for Juvenile
Anthony Hauser	Father
Colleen Hauser	Mother
Calvin Johnson	Attorney for Parents (phone)
James Turner	Consulting Attorney (phone)
Tom Hagen	Attorney for Parents
Rachel Swenson	BCFS
Tom Sandberg	BCFS
James Olson	Brown County Attorney
Tricia Niebuhr	Asst. County Attorney
Shiree Oliver	Guardian ad Litem
Tom Sinas	Attorney for Guardian
Brandon Vaughn	Attorney for Guardian

After several prior hearings and Orders herein, a hearing was held on May 19, 2009. The mother and Daniel did not appear for that hearing. The Court issued an Apprehension and Detention Order for Daniel that same day, directing law enforcement within and without Minnesota to apprehend Daniel and to deliver him into the custody of

Brown County Family Services ("BCFS"). The Court transferred Daniel's custody to BCFS in that same Order and authorized BCFS to consent to medical care for Daniel.

It was subsequently confirmed that the mother had taken Daniel outside of Minnesota.

Daniel and his mother returned voluntarily to Minnesota in the early morning hours of Monday, May 25th.

At the May 26th hearing, Mr. Elbert informed the Court that he had met with Daniel in person and that Daniel had stated that he did not want to be present in the courtroom during the hearing. Mr. Elbert waived Daniel's presence on the record.

Mr. Sinas, on behalf of the Guardian ad Litem, made a motion to close the proceedings to the public, citing the "exceptional circumstances" of this case. Mr. Sinas stated that the reason for the motion was the Guardian's belief that the media attention is not in Daniel's best interests.

The Court denied the motion to close the proceedings.

The Court disclosed on the record telephone communications that the Court had on Sunday and Monday with law enforcement officials and Mr. Johnson regarding the circumstances of the return of Daniel and his mother to Minnesota and the scheduling of the May 26th hearing.

Mr. Olson moved to dismiss CR-09-455, a criminal matter against the mother. The Court dismissed that file.

In this matter, the Court received as Exhibit 1 a copy of medical records and a treatment plan for Daniel Hauser from Children's Hospitals and Clinics of Minnesota dated May 25, 2009. There was discussion about the release of Exhibit 1 to the public. A redacted version of Exhibit 1 will be made available to the public. The Court has considered the arguments for sealing the record. The Court finds that Exhibit 1 contains very relevant information concerning Daniel's condition and that the condition described therein is already publicly available. There is a legitimate public interest in access to this court record that outweighs the privacy interests of Daniel and his family at this point. Exhibit 1 describes the condition of Daniel's tumor and describes the progress of his disease. The public has a right in these circumstances to have access to the evidence that has resulted in the actions of the parties and the decision of the Court.

Mr. Hagen made a motion for return of Daniel's physical custody to his parents. Mr. Hagen informed the Court that the parents were willing to consent to the treatment plan and schedule set forth for Daniel in Exhibit 1.

Mr. Elbert took no position on the parents' motion regarding Daniel's custody. Mr. Elbert did inform the Court that Daniel states that he is willing to undergo chemotherapy one round at a time and wishes to be consulted before and after appointments about the next step to be taken in his treatment.

The Guardian ad Litem, through counsel, opposed return of Daniel's physical custody to the Hausers.

Mr. Olson also opposed returning Daniel's physical custody to the parents, arguing that there is insufficient assurance that the mother will not leave with Daniel as she did the previous week. Mr. Olson informed the Court that there is a relative of Daniel's who is willing to care for him.

Mr. Johnson argued that Daniel needs the support of family now more than ever.

The Court addressed the father directly. The father agreed that Daniel needs the treatment plan set forth in Exhibit 1. The father specifically committed on the record that he will follow through with that treatment plan for Daniel.

The Court also addressed the mother directly. The mother agreed that Daniel's tumor has gotten worse and that the treatment plan set forth in Exhibit 1 is necessary to

save Daniel's life. She also committed on the record to following through with the treatment plan for Daniel.

Mr. Johnson suggested that a nurse be in the Hauser home to care for Daniel and to provide assurance to the County.

The Guardian ad Litem stated that Daniel's best interests require consistent medical treatment, including chemotherapy, and consistent support from his parents telling him that chemotherapy is the right thing to do. The Guardian ad Litem expressed doubt as to whether the parents can be trusted to follow through with chemotherapy. The Guardian ad Litem stated that the parents had, on May 25th, expressed disagreement with chemotherapy. The Guardian ad Litem recommended that Daniel be placed with the relative who is willing to care for him and that the parents have supervised visits with him.

Mr. Olson stated that Dr. Joyce, who visited the Hausers at their farm on May 25th, reported that the parents were still oppositional to chemotherapy. Mr. Olson requested that the custody of Daniel remain with BCFS.

People are entitled to their own opinions, but are not entitled to their own facts. The facts here are that Daniel's cancer responded well to the first cycle of chemotherapy. Acting contrary to the requirements of

Minnesota law, the parents thereafter failed and refused to provide necessary medical care for Daniel. Brown County intervened. Absolutely all of the medical evidence is that the parents' failure and refusal to provide Daniel with necessary medical care resulted in Daniel's condition greatly deteriorating. Daniel very likely will not survive without further chemotherapy. All of the medical experts agree on that. He has a good chance of recovery with chemotherapy. The parents also now agree with that. They love Daniel and he loves them. His outlook and attitude, which are critical to the recovery process, will be most positive if he stays in the care of his parents. His recovery will be most probable if the parents, in turn, continue to follow the directives of the Children's Hospital oncologists. The only reasonable course in these circumstances is to resume the treatment plan recommended by the oncologists. The parents now recognize that the only reasonable course is to resume that treatment plan. Daniel's best interests require the recommended treatment with all appropriate supportive services, coupled with the love of family in Daniel's home.

Based upon the foregoing, the Court makes the following:

ORDER

1. The May 19th Order transferring Daniel's custody to BCFS is STAYED, conditioned upon strict compliance with the following conditions:

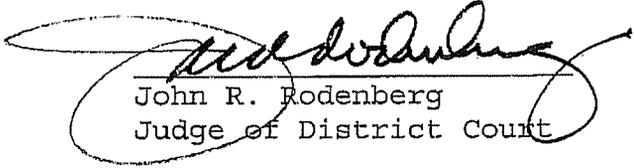
- A. Daniel and both of his parents shall follow the course of treatment devised by Dr. Michael Richards, M.D. This includes continuing chemotherapy. One additional cycle of chemotherapy will not suffice.
- B. The parents shall cause Daniel to appear for his medical appointment scheduled for Wednesday, May 27th.
- C. Daniel shall commence chemotherapy on Thursday, May 28th, and he and his parents shall comply with the treatment plan set forth in Exhibit 1.
- D. The physicians at Children's Hospitals and Clinics of Minnesota shall keep the Court, the Guardian ad Litem, and BCFS informed of Daniel's treatment status. Regular updates shall be provided to the above persons/entities, and any departures from the treatment plan set forth in Exhibit 1 shall be immediately reported.

2. If there are violations of or any non-compliance with the terms of this Order, the stay of the transfer of custody shall be revoked and this matter shall be promptly brought back before the Court.

3. The Court has every confidence that Children's Hospital would do so anyway, but it is specifically ordered that Daniel shall be given all appropriate and available supportive services through the hospital to assist him. He wants to be consulted going forward and should be. As previously determined by the Court, Daniel does not understand his illness. He seems now to be trying to understand it and wants and needs both information and support. Daniel's parents also need to support him. They now say that they will and have committed to the Court on the record that they will follow the course of treatment prescribed by Children's Hospital. They can and should work with Children's Hospital to implement alternative therapies in conjunction with the chemotherapy, but not to its exclusion. If everyone does as they have now committed to do, Daniel is likely to recover from his disease and to live a full life.

4. The Brown County Court Administrator shall set this matter on for a review hearing to occur in approximately 30 days.

Dated: May 27, 2009



John R. Rodenberg
Judge of District Court

Original: Brown County Court Administration

Copies: Calvin P. Johnson

James R. Olson

Phillip Elbert

Tom Sinas

Dr. Bruce Bostrom c/o Children's Hospital