

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF BROWN

FIFTH JUDICIAL DISTRICT

In the Matter of the Child of:

Colleen Hauser and Anthony Hauser,  
Parents.

ORDER TO APPREHEND  
AND DETAIN

Court File No. JV-09-068

The above-entitled matter came on for hearing before the undersigned Judge of District Court on May 19, 2009 at the Brown County Courthouse in New Ulm, Minnesota.

Appearances were:

Phil Elbert	Attorney for Juvenile
Anthony Hauser	Father
Calvin Johnson	Attorney for Parents
Rachel Swenson	BCFS
Stacy Helget	BCFS
Tom Sandberg	BCFS
James Olson	County Attorney
Shiree Oliver	Guardian ad Litem
Mark Fiddler	Attorney for Guardian
Tom Sinas	Attorney for Guardian
Brandon Vaughn	Attorney for Guardian
Randall Tietjen	Attorney for Guardian

The Court issued an Order dated May 14, 2009. In that Order, the Court provided that, "the film study recommended by Dr. Joyce must be completed and interpreted prior to the next hearing on May 19, 2009." *May 14, 2009 Order, p. 46.*

The Court stated: "Provided that the parents get the chest x-ray with one of those doctors and authorize immediate

release of the results to Brown County Family Services, the attorneys, Guardian ad Litem, and the Court, the child should remain in their care and custody." *Id.* The Court further provided that: "However, if the family either indicates continued refusal to abide by the Court's Order(s) or refuses to identify one provider which the family prefers over the others, then the Court will have no choice but to transfer custody of the child to Brown County for purposes of temporary care while the treatment proceeds." *Id.* at 47.

Neither Daniel nor his mother were present at the hearing on May 19<sup>th</sup>.

Mr. Johnson informed the Court that there might be a conflict in his continuing to represent both parents.

Mr. Elbert cited to the portion of Minnesota Rule of Professional Conduct regarding the representation of clients with diminished capacity. Mr. Elbert argued that Daniel is a client with diminished capacity<sup>1</sup> and that Mr. Elbert, as Daniel's lawyer, is therefore empowered to take "reasonably protective action" on Daniel's behalf without consulting him. Mr. Elbert requested that the Court transfer Daniel's custody to BCFS, issue an Apprehension

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<sup>1</sup>This observation is consistent with the Court's Findings of Fact after the trial.

Order for Daniel, and order that Daniel see an oncologist of the family's choosing or of the Court's choosing.

The County Attorney called the father, Anthony Hauser, to testify regarding the whereabouts of Daniel and the mother. Mr. Johnson objected on the basis of marital privilege. The Court overruled the objection on the basis of that portion of Minn. Stat. §595.02, subd. 1(a) providing for an exception to the marital privilege in proceedings alleging child dependency or neglect.

The father indicated that he does not know the whereabouts of the mother or Daniel. The father testified to last seeing the mother on the evening of May 18<sup>th</sup> at the family's farm for a very short period of time, at which time the mother told him that she was going to leave "for a time." The father testified that he did not see Daniel with the mother.

The County Attorney called Mary Ann Hauser, Daniel's sister. Mary Ann also testified that she does not know where Daniel or her mother are located.

Mr. Sinas called Dr. Joyce to testify by telephone. Dr. Joyce testified that he saw Daniel and the mother on May 18<sup>th</sup> at his office. Daniel had a chest X-ray at that time, as had been ordered by this Court. Dr. Joyce testified that the mother and Daniel were accompanied by

Susan Daya. Dr. Joyce's findings included an enlarged lymph node near Daniel's right clavicle, X-ray revelation of "significant worsening...of right hilar/mediastinal mass," and extreme pain in the port site, most likely caused by the tumor or mass pressing on the port. Dr. Joyce was of the opinion that the cancer is again active and getting worse (lymphoid proliferation), with evidence on film that the doctor described as "fairly dramatic." Dr. Joyce testified that he suggested various oncologists that Daniel might see, but that Ms. Daya and the mother declined and indicated that they had another appointment. Ms. Daya and the mother did not tell Dr. Joyce with whom that appointment was or where they were going. The mother and Ms. Daya departed from Dr. Joyce's office with Daniel in some haste. Daniel has not been seen since.

Mr. Sinas called Arlene Schroepfer, mother of Colleen Hauser, by telephone. Ms. Schroepfer testified that she has not spoken to Colleen Hauser in two weeks and that she does not know where Daniel and the mother are located.

The notes of Dr. Joyce from the May 18<sup>th</sup> visit were received as Exhibit 101. The report from Daniel's May 18<sup>th</sup> X-ray were received as Exhibit 102.

From the evidence received at the hearing, it appears that the mother has taken Daniel and is secreting him from

the Court and other authorities. At present, the whereabouts of the mother and Daniel are unknown. It is imperative that Daniel receive the attention of an oncologist as soon as possible. His best interests require it.

Based upon the foregoing, the Court makes the following:

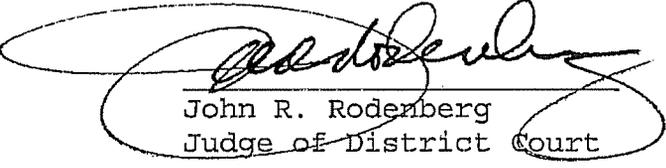
ORDER

1. Law enforcement officers within and without the State of Minnesota are authorized and directed to apprehend Daniel Hauser. Daniel shall forthwith be delivered into the custody of Brown County Family Services, phone #507-359-6500, to receive immediate medical care.

2. Daniel Hauser's custody is hereby transferred, effective immediately, to Brown County Family Services. Brown County Family Services shall have the authority to consent to any appropriate and necessary medical procedures for Daniel.

3. An Order finding the mother in contempt of Court shall issue separately.

Dated: May 19, 2009

  
John R. Rodenberg  
Judge of District Court

Original: Brown County Court Administration

Copies: Calvin P. Johnson

James R. Olson

Phillip Elbert

Mark D. Fiddler