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14 *Mary's Regional Medical Center*

15
16 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
17
18 IN AND FOR THE COUNTY OF WASHOE
19

20 IN THE MATTER OF THE GUARDIANSHIP
21 OVER THE PERSON AND ESTATE OF,

22 ADEN HAILU,

23 An Adult Ward.,

24 FANUEL GEBREYES,

25 Petitioner,

26 vs.

27 PRIME HEALTHCARE SERVICES, LLC dba
28 ST. MARY'S REGIONAL MEDICAL
CENTER,

Respondent.

Case No. GR15-00125

Dept. No. 12

NOTICE OF ENTRY OF ORDER

TO: All parties and their counsel of record:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that on July 30, 2015, the above-entitled Court entered its Order Denying Temporary Restraining Oder and Permanent Injunction, to which Order reference is hereby made for further particulars.

Snell & Wilmer
LAW OFFICES
6100 Neil Road, #555
Reno, Nevada 89511
775.829.6000

1 A copy of the Order Denying Temporary Restraining Order and Permanent Injunction
2 filed July 30, 2015, is attached hereto and marked Exhibit "1."

3 **AFFIRMATION**
4 **Pursuant to NRS 239B.030**

5 The undersigned does hereby affirm that the proceeding document does not contain the
6 social security number of any person.

7 Dated: July 30, 2015

SNELL & WILMER LLP.

8
9 By: 

10 William E. Peterson, No. 1528
11 Janine C. Prupas, No. 9156
12 50 West Liberty Street, Suite 510
13 Reno, Nevada 89501

14 *Attorneys for Prime Healthcare Services,*
15 *LLC, dba St. Mary's Regional Medical*
16 *Center*

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CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** by the method indicated:

XX by Court's CM/ECF Program
_____ by U.S. Mail
_____ by Facsimile Transmission
_____ by Overnight Mail
_____ by Federal Express
_____ by Electronic Service
_____ by Hand Delivery

and addressed to the following:

William M. O'Mara, Esq.
The O'Mara Law Firm, P.C.
311 East Liberty Street
Reno, Nevada 89501

Attorney for Plaintiff

DATED: July 30, 2015


An Employee of Snell & Wilmer L.L.P.

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EXHIBIT LIST

- | | | |
|----|--|---|
| 1. | Order Denying Temporary Restraining Order and Permanent Injunction | 9 |
|----|--|---|

EXHIBIT 1

FILED
Electronically
2015-07-30 05:21:02 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5071725

EXHIBIT 1

1 CODE:
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6 IN THE FAMILY DIVISION
7 OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8 IN AND FOR THE COUNTY OF WASHOE
9

10 In the Matter of the Guardianship

11 of the Person and Estate of:

Case No. GR15-00125

12 ADEN HAILU,

Dept. No. 12

13 An Adult.
14 _____/

15 FANUEL GABREYES,

16 Petitioner,

17 Vs.

18 PRIME HEALTHCARE SERVICES, LLC dba

19 ST. MARY'S REGIONAL MEDICAL CENTER

20 Respondent
21 _____

22 **ORDER DENYING TEMPORARY RESTRAINING ORDER**
23 **AND PERMANENT INJUNCTION**

24 Petitioner, Fanuel Gebreyes, the guardian and father of Aden Hailu ("Ms. Hailu")
25 requests a Temporary Restraining Order that will restrain Defendants, Prime Healthcare
26 Services, LLC d/b/a St. Mary's Regional Medical Center ("St. Mary's") from taking any
27 action to remove the Ward and Petitioner's daughter, Ms. Hailu, from the ventilator and
28 to continue medical care including, but not limited to, facilitating a tracheostomy and

1 insertion of a feeding tube, thyroid hormone treatment and proper nutrition "to prevent
2 death and also to facilitate her removal from the hospital." *See July 1, 2015 Ex Parte*
3 *Motion*, 1:24-2:3.

4
5 This matter was originally filed as a new action (CV15-01172) by Petitioner's former
6 counsel in Department 4 of this Court, Judge Connie Steinheimer, on June 18, 2015,
7 seeking an Emergency Motion for Temporary Restraining Order "prohibiting Defendants
8 St. Mary's Regional Medical Center and Prime Healthcare Services from discontinuing
9 life-sustaining measures, including the ventilation, presently sustaining Aden Hailu...
10 until and including July 3, 2015, or such additional time as the Court may deem just and
11 proper for Plaintiff's to obtain an Independent Medical Evaluation." *Emergency Motion*,
12 1:19-1:28.
13

14 Department 4 held an emergency hearing on June 18, 2015. The Parties stipulated
15 that St. Mary's would "maintain all current life-sustaining services until July 2, 2015 at
16 5:00p.m. in order for the Plaintiff to have an independent examination of Aden Hailu;
17 thereafter, any further request for continued life-sustaining services must be requested
18 through the Guardianship Court." The parties further stipulated that "if on July 2, 2015,
19 it is determined that Aden Hailu is legally and clinically deceased, the hospital shall
20 proceed as they see fit, and the instant Complaint for Temporary Restraining Order shall
21 be dismissed." *June 29, 2015 Court Minutes*.
22

23
24 On July 1, 2015, Mr. Gebreyes filed an Ex Parte Motion for Temporary Restraining
25 Order and Emergency Petition for Order Authorizing Medical Care, Restraining Order
26 and Permanent Injunction. Respondent filed an Opposition on July 2, 2015. Mr.
27 Gebreyes argues injunctive relief will maintain the status quo, there is a strong likelihood
28 of success on the merits, Ms. Hailu will suffer damage from denial of this motion, and

1 only a nominal bond should be required. Again, Mr. Gebreyes requests Prime Healthcare
2 Services, LLC, "be restrained from removing Aden Hailu from the ventilator, and ordered
3 to give thyroid hormone treatment, perform a tracheostomy and gastrostomy in order for
4 Aden Hailu to be removed from the hospital." 6:1-6:5.

6 On July 2, 2015, Prime Healthcare Services filed an Opposition arguing Ms. Hailu
7 is legally dead in accordance with accepted medical standards, there is insufficient
8 evidence to establish a likelihood of success on the merits, the balance of all hardships
9 tilts in favor of St. Mary's as it "will be compelled to administer useless life sustaining
10 treatments to a dead person" and "there is a hardship on the hospital required to
11 administer them in violation of the law, and its code of ethics, and ethical principles of
12 morality held by licensed physicians." St. Mary's further argues that public interest
13 "strongly favors St. Mary's because the public policy, as manifested in the Uniform Act, is
14 to eliminate and preclude these types of disputes and debates from being adjudicated and
15 resolved in courtrooms." 7:27-8:8.

18 This Court held a hearing on July 2, 2015. The parties again came to an agreement
19 at that time as follows:

- 20 1. Petitioner has until July 21, 2015 in which to obtain the services
21 of a physician licensed in the State of Nevada who is in good
22 standing with the State medical board and can be credentialed
23 by Respondent in order to examine Aden Hailu and willing to
24 order whatever medications or procedures that licensed
25 physician deems necessary and appropriate for Aden, to include
26 a complete written medical plan and discharge plan. The
27 proposed written medical plan and discharge plan for Aden
28 Hailu will include details about how Aden Hailu will be
discharged from the hospital and how she will be transported to
another location.
2. Petitioner also has until July 21, 2015 in which to submit to the
Court and Respondent a plan of care supported by a licensed
physician in the State of Nevada that details the substance of
ongoing treatment and care plan for Aden Hailu. The proposed

1 ongoing treatment and care plan must also be in the best
2 interests of Aden Hailu determined by the Court as informed by
3 the licensed physician. The care plan will include (1) the method
4 of transportation; (2) the location of the destination; (3) a care
5 plan for when Aden Hailu arrives at the destination; and (4) the
6 method of payment for the ongoing care plan.

- 7 3. Petitioner will arrange for and be responsible for all payment
8 related to all aspects of the medical plan, discharge plan and
9 ongoing care plan.
- 10 4. Respondent will provide hospital privileges to the Nevada
11 licensed physician as identified by Petition on an expedited basis
12 and reasonably accommodate all medical procedures and tests
13 ordered by the licensed physician that the licensed physician
14 deems necessary and appropriate.
- 15 5. The July 2, 2015 hearing on Petitioner's Temporary Restraining
16 Order is suspended until July 21, 2015 at 1:30 p.m. and at that
17 time the Court will address all remaining issues, including
18 supplementation of evidence which may include evidence of
19 Respondent's ethics evaluation, and the licensed physician's (as
20 identified by Petitioner) evaluation of Aden Hailu.

21 *July 23, 2015 Stipulation and Order*

22 The parties appeared before the Court again on July 21, 2015 to present additional
23 evidence and argument. Based on the testimony, exhibits, and arguments of counsel, the
24 Court makes the following Findings of Fact and Conclusions of Law:

25 **Findings of Fact**

- 26 1. The overwhelming weight of the credible medical evidence does not support, and
27 directly contradicts the injunctive relief requested.
- 28 2. The testimony from St. Mary's physicians, Dr. Aaron Heide and Dr. Anthony
Floreani, at the July 2nd and July 21st hearings, was credible and established Ms.
Hailu meets the definition of death pursuant to the Uniform Determination of
Death Act (NRS 451.007(1)(b))¹ based on standards outlined by the American

1 NRS 451.007 Determination of death.

1. For legal and medical purposes, a person is dead if the person has sustained an irreversible cessation of:
(a) Circulatory and respiratory functions; or
(b) All functions of the person's entire brain, including his or her brain stem.

1 Academy of Neurology and that St. Mary's and its physicians followed mandated
2 medical protocols and procedures in reaching their determination.

- 3 3. None of the evidence presented by Petitioner, including the testimony of Dr.
4 Paul Byrne, Dr. Brian Callister and Dr. Scott Manthei negated the substantial,
5 compelling, and credible evidence presented by St. Mary's.
6
7 4. The medical plan of care and discharge plan orally proposed by Petitioner is
8 neither compelling nor convincing as a best interest plan of care for Aden Hailu
9 because it is not sufficiently supported by medical evidence. NRS
10 159.073(1)(c)(1)(I).

11
12 **Conclusions of Law**

- 13 1. The requirements to be established by Petitioner for a Temporary Restraining
14 Order are that it clearly appears from specific facts shown by affidavit or by the
15 verified complaint that immediate and irreparable injury, loss or damage will
16 result. NRCP 65.²
17
18 2. Pursuant to *University and Community College Systems of Nevada*³, before a
19 preliminary injunction will issue, the movant must show: (1) a likelihood of
20 success on the merits, and (2) a reasonable probability that the non-moving
21 party's conduct, if allowed to continue, will cause irreparable harm for which
22

23 2. A determination of death made under this section must be made in accordance with accepted medical standards.

24 3. This section may be cited as the Uniform Determination of Death Act and must be applied and construed to
25 carry out its general purpose which is to make uniform among the states which enact it the law regarding the
26 determination of death.

26
27 ² The second prong of NRCP 65 requires that the applicant's attorney certifies to the court in writing the
28 efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice
should not be required. This is not discussed here as notice was properly given and the respondent attended
each hearing.

³ 120 Nev. 712, 721, 100 P.3d 179, 187 (2004)

1 compensatory damages is an inadequate remedy. The Court must also weigh
2 the potential hardships to the relative parties and others, and the public
3 interest. The grant or denial of injunctive relief is within the reasonable
4 discretion of the Court. See NRS 33.010. See also, *Sobol v. Capital*
5 *Management Consultants, Inc.* 102 Nev. 444, 446, 726 P.2d 335, 337 (1986);
6 *Pickett v. Comanche Construction, Inc.*, 108 Nev. 422, 426, 836 P.2d 42, 44
7 (1992).
8

- 9
- 10 3. The medical evidence herein substantially establishes by clear and convincing
11 evidence that Ms. Hailu meets the definition of death pursuant to the Uniform
12 Determination of Death Act (NRS 451.007(1)(b)) consistent with the medical
13 standards and protocols outlined by the American Academy of Neurology.
 - 14 4. NRS 449.626(1)-(2) pertains to withholding treatment and does not go to the
15 right to require the administration of medical treatment for a person or family
16 member without a reasonable medical basis for the same.
 - 17 5. The medical and care plan for Ms. Hailu as presented by Mr. Gebreyes is not in
18 the best interests of the Ms. Hailu. The Court, separately from the request for
19 and refusal of injunctive relief, does not affirm the treatment plan as proposed
20 by Mr. Gebreyes as it is unsupported by credible medical evidence.
 - 21 6. Petitioner will not suffer immediate and irreparable harm if St. Mary's is not
22 enjoined and restrained from removing Ms. Hailu from the ventilator because
23 medical evidence establishes that Ms. Hailu meets the definition of death under
24 the Uniform Determination of Death Act (NRS 451.007(1)(b)) for legal and
25 medical purposes.
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1 7. Petitioner is not likely to succeed on the merits of his claims based on the
2 insufficiency of medical evidence presented in support of his position, and in
3 consideration of the weight of the medical evidence presented by St. Mary's.

4
5 8. Having balanced the equities and the potential harm, including the extent of the
6 injunctive relief requested by Petitioner, and the impact upon Ms. Hailu, Mr.
7 Gabreyes and St. Mary's, the Court finds that equity does not favor granting
8 injunctive relief. The medical evidence substantially establishes by clear and
9 convincing evidence. Ms. Hailu meets the definition of death per the Uniform
10 Determination of Death Act (NRS 451.007(1)(b)) for legal and medical purposes
11 consistent with the medical standards and protocols outlined by the American
12 Academy of Neurology.

13
14 9. The public interest in this matter is ensuring effectuation of Nevada law and in
15 the treatment and care of Ms. Hailu and similarly situated parties. There is a
16 clear public interest in medical professionals making a final determination of
17 death in these circumstances. Under the Uniform Determination of Death Act,
18 there is a clear public interest in the proper treatment of Ms. Hailu after a
19 determination is made consistent with NRS 451.007(1)(b).

20
21 10. Any findings of fact set forth in this document that are conclusions of law, or
22 conclusions of law that are findings of fact, shall be deemed findings and
23 conclusions as appropriate.

24
25 Based on the foregoing, the Court ORDERS that:

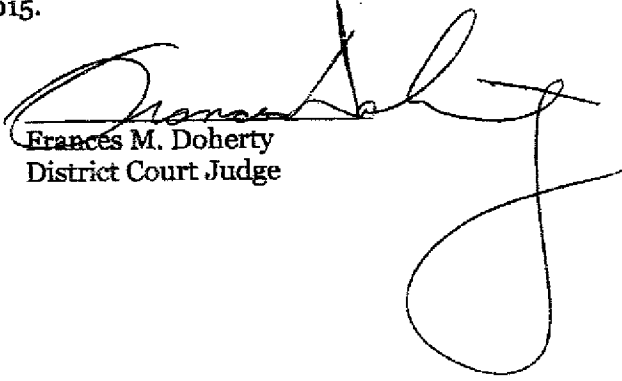
- 26 1. Petitioners' Ex Parte Motion and the Request for Restraining Order are
27 denied.
28

1 2. St. Mary's is not restrained from terminating, withholding, or withdrawing
2 life support systems for Ms.Hailu.

3 3. This order will be stayed for ten days from the date of entry of this order to
4 allow the Petitioner to seek review by the Nevada Supreme Court.
5

6 **IT IS SO ORDERED.**

7 Dated: the 30th day of July, 2015.

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9 
10 Frances M. Doherty
11 District Court Judge
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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court, and that on the _____ day of July, 2015, I deposited for mailing, first class postage pre-paid, at Reno, Nevada, a true and correct copy of the foregoing document addressed to:

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on the 30 day of ~~April~~^{July}, 2015, I electronically filed the foregoing with the Clerk of Court by using the ECF system which will send a notice to:

William E. Peterson, Esq.

William O'Mara, Esq.



Court Employee

1 CODE NO.
2 THE O'MARA LAW FIRM, P.C.
3 WILLIAM M. O'MARA, ESQ.
4 Nevada Bar No. 00837
5 DAVID C. O'MARA, ESQ.
6 Nevada Bar No. 08599
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11 Attorneys for Fanuel Gebreyes

12 IN THE FAMILY DIVISION
13 OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
14 IN AND FOR THE COUNTY OF WASHOE

15 * * *

16 IN THE MATTER OF THE GUARDIANSHIP
17 OVER THE PERSON AND ESTATE OF,

Case No. GR15-00125

18 ADEN HAILU,

Dept. No. 12

19 An Adult Ward.

20 FANUEL GEBREYES,

21 Petitioner,

22 vs.

23 PRIME HEALTHCARE SERVICES, LLC,
24 dba ST. MARY'S REGIONAL MEDICAL
25 CENTER,

26 Respondent.

27 **DECLARATION OF WILLIAM M. O'MARA IN SUPPORT OF PETITION FOR**
28 **ORDER AUTHORIZING MEDICAL TREATMENT, RESTRAINING ORDER AND**
PERMANENT INJUNCTION

Declarant, William M. O'Mara, states under penalty of perjury:

1. I am the attorney for Petitioner, Fanuel Gebreyes, in the above-entitled matter.

1 2. On the 1st day of July, 2015, counsel filed an ex parte motion for temporary
2 restraining order against Prime Health Care Services, LLC, with various declarations attached as
3 well as an Emergency Petition for Order Authorizing Medical Care.

4 3. That counsel has been informed that William Peterson of the law firm of Snell &
5 Wilmer is the assigned counsel, for Prime Healthcare Services, LLC.

6 4. That prior to filing said Motion, counsel provided a copy of the Emergency Petition
7 and Exhibits, Points and Authorities and Ex Parte Motion for Temporary Restraining Order to
8 William Peterson at the offices of Snell and Wilmer located at 50 W. Liberty St., Ste. 510, Reno,
9 Nevada 89501, at ^{12:00}~~1:30~~ o'clock p.m.

10 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing
11 is true and correct except as to those facts based on information and belief, and as to those facts I
12 am informed and believe them to be true.

13
14 **AFFIRMATION**
 (Pursuant to NRS 239B.030)

15 The undersigned does hereby affirm that the preceding document filed in the above
16 referenced matter does not contain the social security number of any person.

17 DATED: July 1, 2015

18 
19 William M. O'Mara
20
21
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23
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25
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of The O'Mara Law Firm, P.C., 311 E. Liberty Street, Reno, Nevada 89501, and on this date I served a true and correct copy of the foregoing document on all parties to this action by:

_____ Depositing in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, following ordinary business practices

 X Personal Delivery

_____ Facsimile

_____ Federal Express or other overnight delivery

_____ Messenger Service

_____ Certified Mail with Return Receipt Requested

_____ Electronically through the Court's ECF system

_____ Email

addressed as follows:

William Peterson, Esq.
Snell & Wilmer LLP
50 W. Liberty Street, Ste. 510
Reno, NV 89501
Fax: 775.785.5441

DATED: July 1, 2015.



WILLIAM M. O'MARA

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3 WILLIAM M. O'MARA, ESQ.
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11 Attorneys for Fanuel Gebreyes

12
13 IN THE FAMILY DIVISION
14
15 OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
16
17 IN AND FOR THE COUNTY OF WASHOE
18

19 * * *

20 IN THE MATTER OF THE GUARDIANSHIP)
21 OVER THE PERSON AND ESTATE OF,

Case No. GR15-00125

22 ADEN HAILU,

Dept. No. 12

23 An Adult Ward.

24 FANUEL GEBREYES,

25 Petitioner,

26 vs.

27 PRIME HEALTHCARE SERVICES, LLC,
28 dba ST. MARY'S REGIONAL MEDICAL
CENTER,

Respondent.

EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER

29 COMES NOW, Fanuel Gebreyes, by and through his counsel, William M. O'Mara, Esq.,
30 of The O'Mara Law Firm, P.C., and hereby moves this court, ex parte, for a temporary
31 restraining order that will restrain Defendants, Prime Healthcare Services, LLC, dba St. Mary's
32 Regional Medical Center, from taking any action to remove the Ward and Petitioner's daughter,

1 Aden Hailu, from the ventilator and to continue proper medical care including, but not limited to,
2 a tracheostomy, gastrostomy, thyroid hormone and proper nutrition to prevent death and also to
3 facilitate her removal from the hospital.

4
5 This ex parte motion is made in good faith and based upon the papers and pleadings filed
6 herein, the Declarations of Fanuel Gebreyes and Paul A. Bryne, M.D., and the Memorandum of
7 Points and Authorities.

8 MEMORANDUM OF POINTS AND AUTHORITIES

9 I. INTRODUCTION

10 1. Aden Hailu, the patient in these proceedings, is Fanuel Gebreyes' daughter. Mr.
11 Gebreyes is also her legally appointed guardian, along with her cousin, Metsihate Asfaw.

12 2. Aden has always taken excellent care of her health. She followed all the doctor's
13 recommendations regarding her health.

14 3. Aden's health has been excellent other than anemia for which she received a blood
15 transfusion approximately 2 years ago.

16 4. Aden has always been willing to endure the treatment in order to fight disease,
17 including a blood transfusion.

18 5. On April 1, 2015 Aden developed abdominal pain and fever. She went to the
19 emergency room. She was admitted to the hospital. Dr. Chu operated on her. At the end of the
20 procedure Aden's blood pressure went down. Aden has been on a ventilator since that time.

21 6. Saint Mary's Regional Medical Center has determined to remove Aden's ventilator.

22 7. The Co-Guardians have done their best by the Ward over the past ten weeks. They
23 have been at the hospital daily and as much as the hospital would allow.

24 8. Against Mr. Gebreyes' clearly expressed wishes on at least four (4) occasions, the
25 hospital performed an apnea test on Aden, and used the results to declare her "brain dead." In
26 making this determination, they ignored Mr. Gebreyes' repeated no, no, no to this test.

27 9. It is clear that the apnea test involved taking away the ventilator that supports
28 Aden's breathing. This did not help her. The apnea test could only have harmed her. Thus, Mr.

1 Gebreyes said no to the apnea test. The hospital and staff withdrew the ventilator for ten (10)
2 minutes according to the medical records and when you consider a normal human being in good
3 health takes a breath 10-15 times per minute, these actions have caused additional damage to Aden.

4 10. The ventilator is helping Aden breathe by pushing air into her lungs. Aden is able
5 to exhale on her own. Aden's lungs are functioning and able to pick up oxygen and get rid of
6 carbon dioxide.

7 11. Mr. Gebreyes has personally observed that his daughter's body is functionally able
8 to heal minor abrasions, meaning that her circulatory system and other organs including her heart,
9 her liver, her kidneys, her spleen, her pancreas and her entire being are functioning.

10 12. The ventilator, medications, nutrition and water, are protecting and preserving
11 Aden's life. They are necessary for Aden to live. Without them, she will die. While it is realized
12 that Aden is seriously ill and that she will not live on earth forever, Mr. Gebreyes wants her to live
13 the lifespan given to her by her Creator. He does not want anyone to shorten her life or hasten her
14 death. Mr. Gebreyes prefers that Aden be living at home.

15 13. On June 2 two doctors informed Mr. Gebreyes that the ventilator would be removed
16 in 2 weeks. The Co-Guardians rejected and objected to this as this will force death on Aden.

17 14. The Co-Guardians have been put under tremendous pressure to remove the
18 ventilator. Hospital employees repeatedly inform them that Aden would be better off dead and
19 that Aden would not want to be living like this. The Co-Guardians believe that Aden wants to live
20 and it is not in her best interest, nor that of her family, to have death imposed on her.

21 15. The hospital informed the Co-Guardians they would no longer treat Aden if they
22 refused to follow their recommendations and remove the ventilator. They were told they would
23 have time to find another facility for treatment, but such has not been the case. The Co-Guardians
24 have not had sufficient time, nor have they had assistance in obtaining care for Aden. Further,
25 they were told on May 2, 2015, that no hospital will accept Aden as a transferred patient. However,
26 if the doctors and staff perform a tracheostomy and gastrostomy, then she can be moved to Mr.
27 Gebreyes' home. However, she must first receive thyroid hormone treatment, wait two (2) days
28 and then the procedures can be performed. Each procedure takes approximately one-half (½) hour.

1 16. Aden cannot speak for herself at this time; however, there is every reason to believe
2 Aden would want to live as long as she can. It is believed that Aden would not want to shorten
3 her own life and she would not want anyone to impose or force death upon her.

4 17. Based upon information and belief, it is believed that Aden is alive and should be
5 cared for. A doctor or anyone else at Saint Mary's Regional Medical Center should not be able to
6 force death upon her. Aden is a living human being and not a corpse.

7 18. If a restraining order is not issued, then, and in that event, Aden Hailu, will die and
8 irreversible harm will be done.

9 II. LEGAL DISCUSSION

10 The purpose of a temporary restraining order under NRCP 65 is to preserve the status quo
11 pending court determination. *All Minerals Corp. v. Kunkle*, 105 Nev. 835, 837-38, 784 P.2d 2, 4
12 (1989); *Baker v. Simonds*, 79 Nev. 434, 386 P.2d 86 (1963). An injunction to maintain the status
13 quo is proper if "injury to the moving party will be immediate, certain, and great if it is denied,
14 while the loss or inconvenience to the opposing party will be comparatively small and insignificant
15 if it is granted." *Rhodes Mining Co. v. Belleville Placer Mining Co.*, 32 Nev. 230, 239, 106 P.2d
16 561, 563 (1910) (quoting *Newton v. Levis*, 79 F. 715 (8th Cir. 1897)).

17 In determining whether a temporary injunction should be granted, two factors are relevant:
18 (1) is there a reasonable probability that the plaintiffs will prevail on the merits; and (2) are the
19 plaintiffs likely to suffer greater injury from a denial of the injunction than the defendants are likely
20 to suffer from its grant. *Number One Rent-A-Car v. Ramada Inns*, 94 Nev. 779, 780-81, 587 P.2d
21 1329, 1330-31 (1978); *Revlon*, 506 A.2d at 179; *Robbins v. Superior Court*, 38 Cal. 3d 199, 206
22 (1985); see also *Heckmann v. Ahmanson*, 168 Cal. App. 3d 119, 125 (1985). Put another way,
23 "[i]f the denial of an injunction would result in great harm to the plaintiff, and the defendants
24 would suffer little harm if it were granted, then it is an abuse of discretion to fail to grant the
25 preliminary injunction." *Robbins*, 38 Cal. 3d at 205.

26 1. *Injunctive Relief Will Maintain the Status Quo*

27 Fmanuel Gebreyes, is one of the Co-Guardians of Aden Hailu, and has been advised that the
28 hospital will remove Aden from the ventilator on Friday, July 3, 2015, at 5:00 p.m., pursuant to an

1 order from the Honorable Connie Steinheimer. A restraining order is necessary to stop their action
2 and keep the status quo.

3 2. ***Strong Likelihood of Success on the Merits***

4 There is a strong likelihood that Petitioner will prevail on the merits. Indeed, since the
5 order of Judge Steinheimer, Fanuel Gebreyes has obtained a medical opinion of the proper medical
6 care for the Ward, his daughter, Aden Hailu (see Declaration of Paul A. Byrne, M.D., attached to
7 the Petition).

8 3. ***Plaintiff Will Suffer Damage From Denial of this Motion***

9 Here, Fanuel Gebreyes can show a high probability of injury absent judicial intervention
10 as Movant will forever be deprived of the opportunity of her right to life as guaranteed in the
11 Nevada and United States Constitutions by the 14th Amendment (Due Process Clause).

12 *See Gimbel v. Signal Cos.*, 216 A.2d 599, 603 (Del. Ch.), *aff'd*, 316 A.2d 619 (Del.1974).

13 In this case, Movant, Mr. Gebreyes, as the father and guardian of Aden Hailu, will suffer
14 irreparable harm because once the ventilator is removed Aden will die and she will not be given
15 an opportunity to heal.

16 As such, without injunctive relief to preclude Prime Healthcare Services, LLC from
17 removing Aden Hailu from the ventilator, the Ward will be severely and irreparably harmed.

18 4. ***Only a Nominal Bond is Required***

19 While a bond may be required as a condition of issuance of a preliminary injunction, the
20 amount of the bond is within the Court's discretion, based on damages which may actually be
21 suffered as a result of the injunction. NRCP 65(c). The enjoined party must present admissible,
22 competent, qualitative and quantitative evidence of harm that an injunction would cause "by any
23 party who is found to have been wrongfully enjoined or restrained. *Id.* Here, the hospital has
24 already violated the instructions of the father and now guardian when they performed the apnea
25 test. Thus, there is no reason to believe that without a restraining order Prime Healthcare will not
26 remove the ventilator. Therefore, a bond amount of \$100.00 should be sufficient.

1 **III. CONCLUSION**

2 For the foregoing reasons, Petitioner's motion for temporary restraining order should be
3 granted. Prime Healthcare Services, LLC should be restrained from removing Aden Hailu from
4 the ventilator, and ordered to give thyroid hormone treatment, perform a tracheostomy and
5 gastrostomy in order for Aden Hailu to be removed from the hospital.

6
7 **AFFIRMATION**
8 (Pursuant to NRS 239B.030)

9 The undersigned does hereby affirm that the preceding document filed in the above
10 referenced matter does not contain the social security number of any person.

11 DATED: July 1, 2015

THE O'MARA LAW FIRM, P.C.

12
13 
14 _____
15 WILLIAM M. O'MARA, ESQ.

16 311 East Liberty Street
17 Reno, Nevada 89501
18 Telephone: 775-323-1321
19 Facsimile: 775-323-4082

20
21 Attorneys for Plaintiff
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of The O'Mara Law Firm, P.C., 311 E. Liberty Street, Reno, Nevada 89501, and on this date I served a true and correct copy of the foregoing document on all parties to this action by:

_____ Depositing in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, following ordinary business practices

 X Personal Delivery

_____ Facsimile

_____ Federal Express or other overnight delivery

_____ Messenger Service

_____ Certified Mail with Return Receipt Requested

_____ Electronically through the Court's ECF system

_____ Email

addressed as follows:

William Peterson, Esq.
Snell & Wilmer LLP
50 W. Liberty Street, Ste. 510
Reno, NV 89501
Fax: 775.785.5441

DATED: July 1, 2015.



WILLIAM M. O'MARA

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

IN THE MATTER OF THE GUARDIANSHIP
OVER THE PERSON AND ESTATE OF,
ADEN HAILU, An Adult Ward

FANUEL GEBREYES, Appellant

vs.

PRIME HEALTHCARE SERVICES, LLC, dba
ST. MARY'S REGIONAL MEDICAL CENTER
Respondent

No. 68531

Electronically Filed
Aug 28 2015 08:56 a.m.

Tracie K. Lindeman
Clerk of Supreme Court
**DOCKETING STATEMENT
CIVIL APPEALS**

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Second Department 12
County Washoe Judge Francis Doherty
District Ct. Case No. GR15-00125

2. Attorney filing this docketing statement:

Attorney David C. O'Mara Telephone 775.323.1321
Firm O'Mara Law Firm, P.C.
Address 311 E. Liberty Street
Reno, NV 89501

Client(s) Fanuel Gebreyes

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney William E. Peterson Telephone 775.785.5440
Firm Snell & Wilmer
Address 50 W. Liberty Street, Ste. 510
Reno, NV 89501

Client(s) Prime Healthcare Services, LLC, dba St. Mary's Regional Medical Center

Attorney Janine C. Prupas Telephone 775.785.5440
Firm Snell & Wilmer
Address 50 W. Liberty Street, Ste. 510
Reno, NV 89501

Client(s) Prime Healthcare Services, LLC, dba St. Mary's Regional Medical Center

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input checked="" type="checkbox"/> Other disposition (specify): <u>Deny Injunction</u> |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Not Applicable

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

Not Applicable

8. Nature of the action. Briefly describe the nature of the action and the result below:

The guardian sought a temporary restraining order that would restrain Respondent from taking any action to remove Ms. Hailu from the ventilator and to continue medical care. The District Court determined that Ms. Hailu meet the definition of death under NRS 451.007(1)(b), and thus, denied the request for temporary restraining order and permanent injunction.

9. Issues on appeal. State specifically all issues in this appeal (attach separate sheets as necessary):

1) Whether the District court erred in denying injunctive relieve when the district court determined that Ms. Aden Hailu ("Ms. Hailu") met the definition of death pursuant to the Uniform Determination of Death Act.

Whether the district court's application of medical standards and protocols outlined by the American Academy of Neurology was in error.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

1) Whether the District court erred in denying injunctive relieve when the district court determined that Ms. Aden Hailu ("Ms. Hailu") met the definition of death pursuant to the Uniform Determination of Death Act (NRS 451.007(1)(b).

2) Whether the district court's application of medical standards and protocols outlined by the American Academy of Neurology was in error.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☐ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☒ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: The Nevada Supreme Court has never addressed the Uniform Act. The District Court decision is outside the normal standards and protocols of other states that have adopted the Uniform Act. This is a matter of removing life-sustaining treatment and thus, is a matter of public policy to determine the proper standards/protocols.

13. Trial. If this action proceeded to trial, how many days did the trial last? 2

Was it a bench or jury trial? Judges Decision after two day hearing.

14. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
No

TIMELINESS OF NOTICE OF APPEAL

15. Date of entry of written judgment or order appealed from July 30, 2015

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

16. Date written notice of entry of judgment or order was served July 30, 2015

Was service by:

☐ Delivery

☒ Mail/electronic/fax

17. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ___, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

18. Date notice of appeal filed August 3, 2015

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

19. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

20. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

☒ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☒ NRAP 3A(b)(3)

☐ NRS 703.376

☐ Other (specify) _____

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The Court has entered a final order denying temporary restraining order and permanent injunction.

The Court has denied Appellants request for injunctive relief.

21. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Aden Hailu

Fanuel Gabreyes

Prime Healthcare Services, LLC dba St. Mary's Regional Medical Center

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Mr. Gebreyes seeks a temporary restraining order to restrain Respondent from removing life-sustaining treatment after Respondent advised the guardian that the treatment would be removed. Mr. Gebreyes seeks the court's relief that the determination by St. Mary's that Aden is dead, was improper.

23. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

24. If you answered "No" to question 23, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☒ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

25. If you answered "No" to any part of question 24, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

The Court did not specifically certify the order or may the express determination, pursuant to NRCP 54(b), but the Court in effect adjudicated all the issues pending.

The order is independently appealable under NRAP 3A(b).

26. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Fanuel Grebreyes

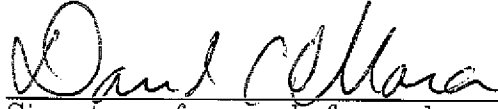
Name of appellant

8/27/15

Date

David C. O'Mara

Name of counsel of record



Signature of counsel of record

Washoe County, NV

State and county where signed

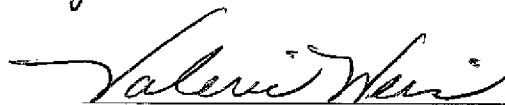
CERTIFICATE OF SERVICE

I certify that on the 27th day of August, 2015, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

William Peterson, Esq.
Janine C. Prupas
Snell & Wilmer, LLP
50 W. Liberty Street, Ste. 510
Reno, NV 89501
Fax: 775.785.5441

Dated this 27th day of August, 2015



Signature