

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

District Court Case No. 15-00123

Electronically Filed  
Nov 25 2015 08:36 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

**REQUEST FOR EXPEDITED  
TREATMENT**

**MOTION/REQUEST FOR EXPEDITED REMITTITUR**

In response to this court's November 16, 2015 Order remanding this matter to the District Court for further proceedings consistent with its opinion, Respondent requested the trial court to schedule a status conference to discuss and schedule those further proceedings. A status conference is currently scheduled for December 2, 2015. Respondent informed court and counsel that because both parties were available on December 3, 2015, Respondent would present a motion, petition, or order to show cause why the Guardian should not be required to consent to an EEG to be performed on the ward, which tests both the Guardian and his counsel have refused. Counsel has also informed Respondent that the trial court has no jurisdiction over this matter until a remittitur has been issued by this Court. Respondent inquired of the Court whether a remittitur could be issued, and was informed to file a motion. This is that motion. This motion is based on the foregoing Points and Authorities.

**Points and Authorities**

On November 16, 2015, this Court issued its Order reversing the District Court's Order

1 denying a temporary restraining order to prohibit Saint Mary's Regional Medical Center ("Saint  
2 Mary's) from disconnecting the ventilator and IV tube from Aden Hailu. The Court remanded the  
3 matter to the District Court for further proceedings consistent with the Court's opinion that the  
4 record failed to establish whether the standards promulgated by the American Academy of  
5 Neurology for the determination of brain death are "accepted medical standards among states that  
6 have enacted the Uniform Determination of Brain Death," and second, "whether those standards  
7 adequately measure the extraordinarily broad standard laid out in NRS 451.007, which requires,  
8 before brain death can be declared under the UDDA, an irreversible cessation of all functions of  
9 the a person's entire brain, including his or her brain stem." Order, pp. 17-18.

10 In order to comply with the Court's Order, respondent requested that the Guardian consent  
11 to the administration of an EEG, which the Court noted in its November 16, 2015 Order, was part  
12 of the test for brain death adopted by the Harvard Medical School, and which the Court noted was  
13 discussed at length during the legislative session adopting the Uniform Act in Nevada. Order, p.  
14 12. By letter dated November 20, 2015, the Guardian informed Respondent that this Court ruled  
15 that Aden Hailu is alive, demanded further treatment, and declined to "consent to an EEG or brain  
16 vascular flow study" on the grounds "that such tests are not without risk. Aden needs treatment,  
17 not tests of her brain." *See* exhibit 1 attached to Declaration of William Peterson. On November  
18 23, 2015, counsel for the Guardian requested that Saint Mary's perform a tracheostomy, provide a  
19 feeding tube, administer thyroid medication and also denied the administration of an EEG, or any  
20 brain vascular flow studies. *See* exhibit 2 to Declaration of William Peterson

21 Counsel for the Guardian also pointed out that this Court has not issued a remittitur to the  
22 District Court and until that occurs the District Court is without jurisdiction over this matter. This  
23 Court previously recognized the importance and urgency of this matter in ordering expedited  
24 briefing and resolution on appeal. In furtherance of those same objectives, Respondent requests  
25 that this Court promptly issue its remittitur so that the District Court may proceed with the issues  
26 remanded to it, and specifically so that she may consider whether to order the Guardian and its  
27 counsel to consent to an EEG.  
28

NRAP 41(a) provides that the Court's remittitur will issue 25 days after the entry of judgment unless the time is shortened or enlarged by order. The District Court has accommodated the parties by making December 2nd and 3rd available on her calendar, and counsel requests that the remittitur issue to accommodate these dates. The 25 day remittitur period is presumably based on NRAP 40, which permits a petition for rehearing to be filed within 18 days of the filing of the plus 7 days, which is consistent with the federal rule that requires a remittitur to be filed within 7 days after the time for petition for rehearing has expired.

The corresponding federal rule also permits the remittitur (mandate) time to be shortened if it appears that a petition for rehearing would be legally futile or frivolous, or, if a party resisting remitter is motivated by delaying tactics to avoid achieving a prompt and speedy result. According to the authorities, in such cases, the Court should close the appellate disposition by simply stating: "No petition for rehearing will be entertained, and mandate shall issue forthwith" citing FRAP 2, which is identical to NRAP 2: "On its own, or on motion, the Supreme Court may – to expedite its decision or for other good cause – suspend any provision of these rules in a particular case and order proceedings as it directs, except as otherwise provided in Rule 26(b)." NRAP 2. *See* Cal. Prac. Guide 9th Cir. Civ. Ap. §10:509.

In this case, it is obvious that the Petitioner, who prevailed, will not be seeking a rehearing. By filing this motion, it is also obvious that Respondent won't be seeking rehearing either. It is obvious that Petitioner is seeking to avoid a prompt and timely testing of brain functions so as to delay a prompt and timely determination of death.

Dated: November 24, 2015

SNELL & WILMER L.L.P.

By: 

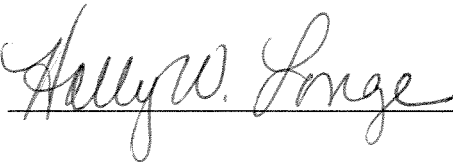
William E. Peterson, No. 1528  
Janine C. Prupas, No. 9156  
50 West Liberty Street, Suite 510  
Reno, Nevada 89501

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

**CERTIFICATE OF SERVICE**

This document was filed electronically with the Nevada Supreme Court on November 24, 2015. Electronic service of this document shall be made in accordance with the Service List as follows:

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

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IN THE SUPREME COURT OF THE STATE OF NEVADA

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

ADEN HAILU,

An Adult Ward.

No. 68531

District Court Co. GR15-00125

FANUEL GEBREYES,

Appellant,

vs.

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

Respondent.

**DECLARATION OF WILLIAM E. PETERSON IN SUPPORT OF  
MOTION/REQUEST FOR EXPEDITED REMITTITUR**

I, William E. Peterson, declare under penalty of perjury of the laws of the State of Nevada, do declare as follows:

1. I am an attorney licensed to practice law in all the state and federal courts in the states of Nevada and California.

2. I am counsel for Respondent in the matter which is the subject matter of this request/motion for which this declaration is provided.

Attached hereto are true and correct copies of the following:

Exhibit 1 November 20, 2015 letter from Fanuel Gebreyes

Exhibit 2 November 23, 2015 letter from David O'Mara

Executed this 24th day of November, 2015.

  
WILLIAM E. PETERSON

EXHIBIT 1

EXHIBIT 1

**FOR PATIENT CHART**

November 20, 2015

**Attention: 1) Primary Responsible Physician(s) caring for Aden Hailu, and  
2) Hospital Administration at St. Mary's Regional Medical Center**

My daughter, Aden Hailu, has been in St. Mary's Regional Medical Center, Reno, Nevada, for more than six months.

The Nevada Supreme Court ruled on November 16, 2015 that Aden Hailu is alive.

I, Fanuel Gebreyes, am grateful for treatments you have provided but I am greatly upset that you have deprived Aden of nutrition other than IV, proper support of ventilation with a tracheostomy, and thyroid medication that can be given easily and inexpensively to her.

Aden needs these and more treatments before she needs EEG or any other tests. I do not consent to EEG or brain vascular flow study. Such tests are not without risk. Aden needs treatment, not tests of her brain.

I direct that no apnea test be performed.

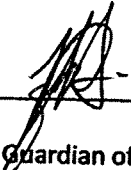
I expect to be fully, explicitly, and promptly informed about all tests, treatments, conditions, and diagnoses of Aden Hailu, my daughter.

I hereby direct that Aden Hailu receive all treatments and care, including all needed surgeries and proper nutrition and hydration, however administered, that will protect and preserve Aden's life.

Do not take any organ for transplantation or any other purpose.

**I hereby also advise that at all times Aden Hailu is to be deemed, and consistently treated, as having FULL CODE STATUS, unless otherwise explicitly directed in writing by me, Fanuel Gebreyes, Father and Legal Guardian of Aden Hailu.**

Sincerely,

  
\_\_\_\_\_  
Fanuel Gebreyes  
Father and Legal Guardian of Aden Hailu

# EXHIBIT 2





P.O. Box 2270  
311 E. Liberty Street  
Reno, Nevada 89505  
(Tel) 775-323-1321  
(Fax) 775-323-4082

November 23, 2015

VIA FACSIMILE – 775.785.5441  
ORIGINAL WILL NOT FOLLOW

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

Re: In Re Aden Hailu. GR15-00125

Dear Bill,

On Friday, November 20, 2015, I received your motion to schedule a status conference with Judge Doherty for tomorrow, November 23, 2015. Notwithstanding the fact that the Supreme Court hasn't issued its remittitur giving the district court jurisdiction, I am also not available on this date. I am willing to discuss dates with you and the Court. However, I also believe that prior to any hearing, St. Mary's needs to take steps to start providing the care Aden deserves and has been lacking over the last six (6) months.

*First*, please provide a complete copy of Ms. Hailu's medical records, not just the doctor's consult notes. As you know, the EEG reports and consult notes are two separate documents and St. Mary's only provided us, and the court, with the consult notes. The medical records should also include a list of medications, the date, and amounts given to Aden since she was admitted to St. Mary's.

Additionally, we would like to have a copy of St. Mary's billing records regarding Aden from April to the present. This would include any request for payment to Aden's insurance company and Medicaid and copies of all payments received.

*Second*, prior to St. Mary's making its improper determination of death, Aden's doctors recommended that she receive a tracheostomy. According to Aden's doctors, this procedure was not preformed because St. Mary's administrators and lawyers got involved. Today, Aden has still not received this necessary treatment even after you specifically told the Nevada Supreme Court that Aden's trachea was about to fail. This failure is because she has been intubated for over six months when she should have received the tracheostomy when her doctors recommended the procedure in April.

November 23, 2015

Page 2

**Third**, St. Mary's needs to stop depriving Aden of the nutrition she needs. As you know, St. Mary's is only providing nutrition through an IV when she should be receiving nutrition through NG or PEG tube.

**Fourth**, Aden is in need of thyroid medication which is administered easily and inexpensively. Aden needs this medication, which she has been deprived of for over six (6) months, so she can start the healing process. We cannot get back the time St. Mary's has precluded Aden from starting the healing process, but we can, and must, start immediately.

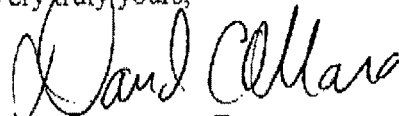
**Fifth**, until Aden has been given the opportunity to begin the healing process with a minimum of a tracheostomy, proper nutrition and thyroid medication, St. Mary's does not have consent to perform any EEG or brain vascular flow studies. Indeed, St. Mary's improper apnea test, without consent, has in all likelihood, caused more damage to Aden. Thus, St. Mary's must fully, explicitly, promptly inform Mr. Gebreyes of any tests, treatments, conditions and diagnoses of Aden prior to and such test being administered.

Finally, Dr. J. Ivan Lopez, the director of the Institute for Neurosciences at Renown Heath and chairman of the Department of Neurology at the University of Nevada, School of Medicine was asked for his opinion in this case by the Las Vegas Review Journal recently. His position was that, "[t]he court is right because the AAN guidelines were not followed. The patient must show ***no evidence whatsoever of brain function***." (emphasis added). It is clear that St. Mary's determination of death was not based on the AAN, but instead, based upon Dr. Heidi's personal opinion that he does not believe that Aden has a reasonable hope for a meaningful recovery.

Aden is alive not only under both the AAN guidelines and Nevada State law. It is time St. Mary's starts to provide Aden with the necessary care she is entitled. Additionally, instead of sending Aden's family on a wild goose chase like it did prior to the evidentiary hearing, St. Mary's needs to reverse its unsupported determination of death and help facilitate Aden's removal from St. Mary's to a more appropriate facility and reinstatement of her Medicaid.

Your cooperation is greatly appreciated.

Very truly yours,



David C. O'Mara, Esq.

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