

IN THE SUPREME COURT OF OHIO

State ex rel. Kathryn Van Kirk :
 :
Relator, : Case No. 2016-0385
 :
v. : Original Action in Prohibition
 :
Court of Appeals for the Eighth :
Appellate Dist. :
Respondent. :

**MOTION TO DISMISS OF RESPONDENT
COURT OF APPEALS FOR THE EIGHTH DISTRICT**

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Eighth District*

Counsel for Relator

IN THE SUPREME COURT OF OHIO

State ex rel. Kathryn Van Kirk,	:	
	:	
<i>Relator,</i>	:	Case No. 2016-0385
	:	
v.	:	Original Action in Prohibition
	:	
Court of Appeals for the Eighth	:	
Appellate Dist.,	:	
<i>Respondent.</i>	:	

**MOTION TO DISMISS OF RESPONDENT
COURT OF APPEALS FOR THE EIGHTH DISTRICT**

Pursuant to Sup.Ct.Prac.R. 12.04 and Civ.R. 12(B)(6), Respondent Court of Appeals for the Eighth District hereby moves this Court to dismiss Relator’s petition for a writ of prohibition. A memorandum in support of this motion is attached.

Respectfully submitted,

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Ohio Attorney General

/s/ Jordan S. Berman

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Memorandum in Support of Motion to Dismiss

In a complicated case of lasting consequence for the family at issue, Respondent Court of Appeals for the Eighth District (hereafter “Eighth District”) acted within its discretion to make sure each side could fully present its case to the courts before an irreversible medical decision is made. While Relator (the mother of the child at issue) may disagree with the Eighth District’s approach, Relator fails as a matter of law to establish the necessary elements for a writ of prohibition.

The Eighth District did not patently and unambiguously exceed its jurisdiction when it granted a temporary injunction and remanded the matter for an evidentiary hearing. The Eighth District’s temporary injunction preserved the status quo and prevented the child from undergoing a procedure that would have rendered any further legal dispute ineffective. Similarly, the Eighth District’s remand for an evidentiary hearing was needed to resolve the status of a 2009 custody agreement by allowing both the mother and the father to present evidence to the juvenile court. Relator’s complaint should be dismissed for failure to state a claim upon which relief may be granted.

I. STATEMENT OF FACTS

On March 9, 2016, Michael Moritz (the father of the child at issue) filed an appeal to the Eighth District, appealing the March 8, 2016, orders of the Cuyahoga County Court of Common Pleas. *See* Respondent’s Ex. 1, Notice of Appeal.¹ He attached to the notice of appeal 1) an order overruling his motion for a restraining order to prevent Relator from transporting the child

¹ Courts commonly take judicial notice of documents filed in other courts. *See, e.g., Kramer v. Time Warner, Inc.*, 937 F.2d 767, 774 (2d Cir. 1991). The Ohio Supreme Court has held that a court may consider “appropriate matters” in determining whether a Civ.R. 12(B)(6) motion should be granted *without* converting it into a motion for summary judgment. *State ex rel. Everhart v. McIntosh*, 115 Ohio St.3d 195, 2007-Ohio-4798, 874 N.E.2d 516, ¶ 10.

out of Cuyahoga County for medical care, and 2) an order granting Relator's motion for a restraining order to enjoin him from interfering with the child's medical care. The latter order included the juvenile court's conclusions about which parent had legal authority under a 2009 custody agreement. The juvenile court appeared unaware that Mr. Moritz had filed a motion to amend that agreement. In a transcript of the juvenile court hearings, Mr. Moritz's counsel informed the court that "we also filed a motion to change the shared parenting agreement because the child's position has changed and worsened[.]" Respondent's Ex. 2, Appeal to Eighth District, p. 70, Feb. 22 Tr. p. 50. Instead of acknowledging that already-filed motion, the juvenile court told Mr. Moritz's counsel that he could "[f]ile a motion to amend." *Id.*

In his appeal, Mr. Moritz argued that Relator and the child might leave Cuyahoga County as early as March 10 for the child to receive a medical procedure. *Id.* p. 2. He also argued that "[t]here is no emergency" that compelled the child's surgery this week. *Id.* p. 4. In contrast, Relator's counsel argued that if the surgery does not take place this week, "the next time surgery could be had at the Paley Institute if there was an available spot would be in August, and that would certainly take her out of a large, significant part of that school year, which we would submit is not in her best interest." *Id.* p. 30, Feb 22. Tr. p. 10.

On March 9, the Eighth District granted Mr. Moritz's motion for a temporary injunction, temporarily prohibiting Relator and the child from travelling for the child's medical treatment pending further order of the court. Compl. Ex. 2. The next day, the Eighth District noted that "the juvenile court failed" to consider Mr. Moritz's motion to amend "prior to granting mother's motion for restraining order to enjoin father from interfering with child's medical care." Compl. Ex. 3. Accordingly, the Eighth District remanded the matter to the juvenile court "with instructions to hold a full evidentiary hearing" on Mr. Moritz's motion to amend. *Id.*

Relator filed an emergency motion in the Eighth District for reconsideration. She also filed this petition for the extraordinary relief of a writ of prohibition, challenging the jurisdiction of the Eighth District to issue an injunction and to remand to the juvenile court for an evidentiary hearing.

II. STANDARD OF REVIEW

In order to be entitled to a writ of prohibition, Relator has the exceptionally difficult task of proving that the Eighth District “patently and unambiguously” lacked jurisdiction. *State ex rel. Shimko v. McMonagle*, 92 Ohio St.3d 426, 428–29, 751 N.E.2d 472 (2001). A Civ.R. 12(B)(6) dismissal of appellants' prohibition complaint for failure to state a claim upon which relief can be granted is justified if, after presuming the truth of all factual allegations of the complaint and making all reasonable inferences in appellants' favor, it appears beyond doubt that a relator can prove no set of facts entitling relator to the requested extraordinary writ of prohibition. *State ex rel. Ragozine v. Shaker*, 96 Ohio St.3d 201, 2002-Ohio-3992, 772 N.E.2d 1192, ¶ 7. “In the absence of a patent and unambiguous lack of jurisdiction, a court having general subject matter jurisdiction can determine its own jurisdiction, and a party challenging that jurisdiction has an adequate remedy by appeal.” *State ex rel. Shimko*, 92 Ohio St.3d at 428–29.

III. LAW AND ANALYSIS

Relator is not entitled to a writ of prohibition. To be entitled to a writ of prohibition, a relator must establish that (1) a lower tribunal is about to or has exercised judicial or quasi-judicial power, (2) the exercise of that power is unauthorized by law, and (3) denying the writ would result in injury for which no other adequate remedy exists in the ordinary course of law. *See State ex rel. Balas-Bratton v. Husted*, 138 Ohio St.3d 527, 2014-Ohio-14068 N.E.3d 933, ¶ 15; *State ex rel. Bell v. Pfeiffer*, 131 Ohio St.3d 114, 2012-Ohio-54, 961 N.E.2d 181, ¶ 18, 23;

State ex rel. Miller v. Warren Cty. Bd. of Elections, 130 Ohio St.3d 24, 2011-Ohio-4623, 955 N.E.2d 379, ¶ 12. Relator must establish that the Eighth District “patently and unambiguously” lacked jurisdiction when it issued the injunction and remanded to the juvenile court for an evidentiary hearing. *State ex rel. Shimko*, 92 Ohio St.3d at 428–29. Because the Eighth District exercised power authorized by law, Relator’s complaint must be dismissed.

A. The Eighth District exercised power authorized by law.

The Eighth District did not exceed its authority when it 1) issued a temporary injunction, and 2) remanded the matter for an evidentiary hearing. Contrary to Relator’s assertions, both of these actions were well within the Court’s discretion.

1. The Eighth District was authorized to issue the temporary injunction.

Ohio courts of appeals have broad authority to issue temporary injunction orders under App.R. 7: “(A) * * * A motion * * * for an order * * * granting an injunction during the pendency of an appeal may be made to the court of appeals * * *.” Moreover, R.C. 2727.05 provides that “an injunction also may be allowed by the supreme court or court of appeals, or by a judge of either, as a temporary remedy, during the pendency of a case on appeal in such courts.” *See also* R.C. 2727.03 (also providing for issuance of injunctions by courts of appeals); *Dep’t of Admin. Servs., Office of Collective Bargaining v. State Employment Relations Bd.*, 54 Ohio St. 3d 48, 50, 562 N.E.2d 125 (1990) (collecting statutes).

Generally, a court of appeals issues a temporary injunction when it is necessary “to preserve the status quo of the case and to prevent any action of the parties from making null and unenforceable the final judgment” of the lower court. *Gries Sports Enterprises, Inc. v. Cleveland Browns Football Co.*, 26 Ohio St. 3d 15, 30, 496 N.E.2d 959 (1986); *see also* R.C. 2727.02 (allowing an injunction where one is about to or appears about to do an act that would tend “to

render the judgment ineffectual”); *Wagner v. Railway Co.*, 38 Ohio St. 32 (1882), at paragraph two of the syllabus (“It is within the appellate jurisdiction of the supreme court to allow a temporary injunction where it appears that defendant is doing or threatens to do acts respecting the subject of an action pending, tending to render the judgment ineffectual.”)

In this case, Relator’s plan to take the child for medical care outside of Cuyahoga County was an appropriate subject for an injunction. Relator does not contest that the medical procedure scheduled for the child this week is irreversible and would render “null and unenforceable” any final judgment on her restraining order—to prevent Mr. Moritz from interfering with the procedure—or the related disputes over the legal powers granted by the 2009 custody agreement. *Gries Sports Enterprises, Inc.*, 26 Ohio St. 3d at 30. Unlike Relator’s definition of status quo—that her upcoming plans for this week should remain unchanged, Relator’s Br. p. 5—the proper analysis is whether the parties must be kept in their same *current* position so as not to “render the judgment ineffectual.” R.C. 2727.02. Accordingly the Eighth District acted within its authority when it temporarily restricted Relator’s travel plans that could have rendered null all other rulings in this matter as early as the next day. In addition, that expedited timetable justified “immediate action without response briefs or oral hearing.” *Gries Sports Enterprises, Inc.*, 26 Ohio St. 3d at 30.

2. The Eighth District was authorized to remand the matter for an evidentiary hearing.

The Eighth District did not patently and unambiguously lack jurisdiction to remand the matter for an evidentiary hearing, as necessary for a claim of prohibition. It is well within the Eighth District’s authority to remand a case before it for an evidentiary hearing. Under R.C. 2505.39, a court of appeals “that reverses or affirms a final order, judgment, or decree of a lower court upon appeal on questions of law, shall not issue execution, but shall send a special mandate

to the lower court for execution or further proceedings.” Even if this Court finds the issue ambiguous, that would still be insufficient as a matter of law to establish a right to prohibition.

First, the juvenile court order was a final, appealable order. On its face, the order stated that, pursuant to Juv. R. 34(J), “an appeal of the order herein may be taken to the Eighth District Court of Appeals[.]” Ex. 1 p. 4 (March 8, 2016 order). Furthermore, R.C. 2505.02(B)(4) provides that an order that grants or denies a provisional remedy is appealable if both of the following apply:

“(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy;” and

“(b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.”

If Mr. Moritz were not able to appeal the order, the child would have the medical procedure at issue this week, thus depriving Mr. Moritz of a meaningful and effective remedy. *See, e.g., State v. Muncie* (2001), 91 Ohio St.3d 440, 451, 746 N.E.2d 1092.

Second, the Eighth District acted within its authority to remand for further proceedings after reversing the juvenile court’s final, appealable order. The Eighth District found that the juvenile court improvidently granted Relator’s motion for restraining order—to prevent Mr. Moritz from interfering with the child’s medical care—without first conducting an evidentiary hearing on Mr. Moritz’s motion to amend the 2009 custody agreement. This is particularly concerning where the juvenile court’s order discussed who had legal authority “to make medical decisions for the child” under the 2009 custody agreement in dispute. Ex. 1 p. 4 (March 8, 2016 order). Accordingly, as the juvenile court “failed to resolve” the status of the 2009 custody agreement “prior to granting mother’s motion,” Compl. Ex. 3, a remand for a full evidentiary

hearing was a proper remedy to resolve whether Mr. Moritz had the right to interfere with the child's medical care.

B. Relator has other available legal remedies.

Relator has other legal options available. “[P]rohibition will [not] issue if the party seeking extraordinary relief has an adequate remedy in the ordinary course of law.” *State ex rel. Caskey v. Gano*, 135 Ohio St.3d 175, 2013-Ohio-71, 985 N.E.2d 453, ¶ 2, quoting *Dzina v. Celebrezze*, 108 Ohio St.3d 385, 2006-Ohio-1195, 843 N.E.2d 1202, ¶ 12. Here, Relator can contest the matter in the evidentiary hearing, await the result of her pending motion for reconsideration in the Eighth District, or at some point appeal the matter to this Court.

These remedies are sufficient even if they do not result in the child receiving the medical procedure on Relator's preferred date of March 17. As her counsel mentioned in the juvenile court proceedings, there appears to be another potential date for the procedure in August. Ex. 2 p. 30, Feb. 22. Tr. p. 10. In both the juvenile court and here, the concern appears to be not the immediate need for the treatment so much as the desire for the child not to miss too much school. Compl. ¶ 15 (“The upcoming date would minimize lost school days because the last three months of Olivia's rehabilitation can occur this summer when there is no school.”) Mr. Moritz filed a motion to amend the 2009 custody agreement, and the Eighth District appropriately decided that the juvenile court should fully consider that apparently-overlooked motion before a final medical decision is made.

There are important issues that still need to be resolved in this case, and the Eighth District decided to give the parties a full opportunity to be heard. While Relator may disagree with this outcome, she has not established the elements needed to justify the extraordinary relief that she seeks.

IV. CONCLUSION

For the foregoing reasons, Respondent Court of Appeals for the Eighth District respectfully moves this Court to dismiss Relator's extraordinary action in prohibition.

Respectfully submitted,

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Ohio Attorney General

/s/ Jordan S. Berman

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*Counsel for Respondent Court of Appeals for the
Eighth District*

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Motion to Dismiss* was served by regular U.S. mail, postage prepaid, and email on March 16, 2016, upon the following:

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Assistant Attorney General

COURT OF COMMON PLEAS, JUVENILE DIVISION
CUYAHOGA COUNTY, OHIO

IN THE MATTER OF: OLIVIA MORITZ

CASE NO: CU08131418

JUDGE: THOMAS F. O'MALLEY

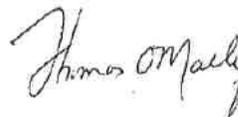
MOTION FOR A TRANSCRIPT OF
HEARING

This matter came on for consideration this 3rd day of March, 2016, before the Honorable Thomas F. O'Malley upon the motion of Kevin Cronin, Counsel for Michael Moritz, requesting a transcript of the hearing held in this matter on February 22, 2016, before Magistrate Eleanore Hilow.

Upon due consideration, the Court grants said motion.

The Court further orders Michael Moritz, Father, to pay for the cost of the transcript. The cost will be determined by the Clerk's Office.

The transcript is to be ready for delivery as soon as possible.
(cjmps)



Judge Thomas F. O'Malley
March 04, 2016

Filed with the clerk and journalized by Cuyahoga County Juvenile Court Clerks Office,
Volume 120, Page 9646, March 08, 2016, glumbus1

COURT OF COMMON PLEAS, JUVENILE DIVISION
CUYAHOGA COUNTY, OHIO

IN THE MATTER OF: OLIVIA MORITZ

CASE NO: CU08131418

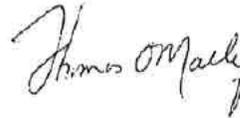
JUDGE: THOMAS F. O'MALLEY

JOURNAL ENTRY

This matter came on for consideration this 8th day of March, 2016, before Judge Thomas F. O'Malley regarding a Motion For Restraining Order filed by Kevin Cronin, Counsel for Michael Moritz, on March 4, 2016.

This Court finds that upon review of the Court file and the Motion, the Motion is not well taken.

It is therefore ordered that the Motion For Restraining Order is hereby overruled.
(cjmps)



Judge Thomas F. O'Malley
March 08, 2016

COURT OF COMMON PLEAS, JUVENILE DIVISION
CUYAHOGA COUNTY, OHIO

IN THE MATTER OF: OLIVIA MORITZ

CASE NO: CU08131418

JUDGE: THOMAS F. O'MALLEY

JUDGMENT ENTRY

The matter came on for consideration this 8th day of March, 2016 before the Honorable Judge Thomas F. O'Malley for approval of the Magistrate's Decision filed on February 22, 2016. Pursuant to Juv. R. 40(D)(4)(e) and Civ. R. 53(D)(4)(e), upon an independent review of the matter, the Court hereby affirms, approves and adopts the Magistrate's Decision that was filed on February 22, 2016.

The Court makes the following findings and orders:

The matter was before the court upon the Motion for a Restraining Order filed by Kathryn Murch, Mother

The Magistrate found that service requirements have been met and that all necessary parties were present in court.

The following persons were present for the hearing: Kathryn Murch, mother; Michael Moritz, father; Anne S. Magyaros, counsel for mother; Kevin Cronin, counsel for father.

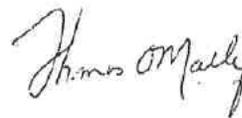
The Magistrate explained legal rights, procedures, and possible consequences.

The Magistrate heard arguments

Pursuant to the custody agreement executed by the parties on May 12, 2009, mother was designated as the residential parent and legal custodian of the child. Pursuant to statute mother has the authority to make medical decisions for the child.

IT IS THEREFORE ORDERED THAT: The Motion for a Restraining Order filed by Kathryn Murch, Mother, requesting that father be enjoined from interfering with child's medical care is hereby granted.

(daw)



Judge Thomas F. O'Malley
March 08, 2016

Notice to the Parties: Pursuant to Rule 34(J) of the Rules of Juvenile Procedure and Rules 3 and 4 of the Ohio Rules of Appellate Procedure, an appeal of the order herein may be taken to the Eighth District Court of Appeals by filing a Notice of Appeal with the Clerk of the trial court within thirty days of the entry of the judgment or final order. Failure to file a timely Notice of Appeal may result in the dismissal of the appeal.

COURT OF COMMON PLEAS
JUVENILE COURT DIVISION
CUYAHOGA COUNTY
FILED

APPENDIX A

EIGHTH DISTRICT COURT OF APPEALS — LOCAL APPELLATE RULE NO. 9

2016 MAR -9 A 9:59

CLERK OF COURTS

PRAECIPE

Plaintiff,

vs.

In the Matter of Olivia Moritz

(DOB: 1 12 2007)

Defendant.

Trial Court Case No. CU06131418
Date Of Final Judgment
In Trial Court February 22, 2016
The Notice Of Appeal Was Filed
Timely In Compliance With:
 App.R. 4(A) — within 30 days
of the entry of judgment
 App.R. 4(B) — exceptions to
the 30-day requirement

TO THE CLERK OF THE TRIAL COURT:

- 1. Appellant requests that the clerk immediately prepare and assemble the original papers and exhibits filed in the trial court and a certified copy of docket and journal entries.
- 2. In addition, appellant will cause the record in this appeal to include the following (if applicable):
 - a. Complete transcript under Appellate Rule 9(B).
 - b. Partial transcript under Appellate Rule 9(B).
 - c. Statement of evidence or proceedings under Appellate Rule 9(C).
 - d. Agreed statement under Appellate Rule 9(D).

Kevin Cronin, Attorney at Law
Appellant or Attorney for Appellant

FILED
COURT OF APPEALS
MAR -9 2016

PLEASE NOTE:

- 1. The appellant must instruct the court reporter to prepare the transcript.
- 2. If the items checked above are not timely filed with the court, then the appeal will be dismissed. App.R. 10(A).

Save As

APPENDIX B

COURT OF COMMON PLEAS
JUVENILE COURT DIVISION
CUYAHOGA COUNTY
FILED

2016 MAR -9 A 10:00

CLERK OF COURTS

EIGHTH DISTRICT COURT OF APPEALS — LOCAL APPELLATE RULE NO. 9

DOCKETING STATEMENT

Trial Court Case No. CU08131418

Plaintiff,

vs.

In re matter of Olivia Moritz
(DOB: 1 12 2007)

Defendant.

A. CHOOSE THE APPROPRIATE DESIGNATION FOR THIS CASE (check one):

-
-
-
-

Accelerated calendar (see Loc.App.R. 11.1.)

Regular calendar

Denial of bail appeal

Appeal (check one of the following):

A. From an order granting or denying:

1. Adoption of a minor child; or

2. Termination of parental rights. See App.R. 11.2.

B. Concerning a dependent, neglected, unruly, or delinquent child. See App.R. 7(C).

FILED
MAR -9 2016
Clerk of Courts
Cuyahoga County, Ohio

(Item A of this docketing statement was adopted at the Judges meeting on February 15, 2001 to comply with Appellate Rule 11.2.)

Assigned to the accelerated calendar for the reason(s) checked (see Local Rule 11.1).

- 1. No transcript required.
- 2. Transcript and all other evidentiary materials consist of one hundred (100) or fewer pages.

Assigned to the regular calendar with full briefing for the reason(s) checked.

- 1. Transcript and all other evidentiary materials are more than one hundred (100) pages.
- 2. Brief in excess of fifteen (15) pages is necessary to argue the issues adequately.

3. Appeal concerns unique issue of law that will be of substantial precedential value in determining similar cases.
4. Appeal concerns multiple or complex issues.
5. A statement is submitted under App.R. 9(C).

B. THE FOLLOWING QUESTIONS APPLY TO ALL CIVIL AND ADMINISTRATIVE APPEALS:

1. Final appealable order:

- (a) Has the trial court disposed of all claims by and against all parties?
- Yes. Attach copies of all judgments and orders indicating that all claims against all parties have been dismissed.
- No.
- (b) If the answer to (a) is "No," has the trial court made an express determination that there is "no just reason for delay," per Civ.R. 54(B), with respect to the judgment or order from which the appeal is taken?
- Yes, in the same judgment or order.
- Yes, in a subsequent order dated _____. Attach a copy of the subsequent order.
- No.
- (c) Is the judgment or order subject to interlocutory appeal under R.C. 2505.02 (check all that apply)?
- Yes, because the order affects a substantial right in an action and prevents a judgment. *See* R.C. 2505.02(B)(1).
- Yes, because the order was made in a special proceeding. *See* R.C. 2505.02(B)(2).
- Yes, because the order vacates or sets aside a judgment or grants a new trial. *See* R.C. 2505.02(B)(3).
- Yes, because the order grants or denies a provisional remedy and meets the other criteria of R.C. 2505.02(B)(4).
- Yes, because the order determines that an action may or may not be maintained as a class action. *See* R.C. 2505.02(B)(5).
- No.

(d) Does the right to an immediate appeal arise from a provision of a statute other than R.C. 2505.02?

Yes. Identify statute: _____

No.

NOTE: IF THE ANSWER TO ALL OF THE ABOVE IS "NO," THE ORDER IS NOT A FINAL APPEALABLE ORDER, AND THE APPEAL WILL BE SUMMARILY DISMISSED FOR LACK OF APPELLATE JURISDICTION.

2. Nature of case:

- Administrative Appeal
- Contract
- Declaratory Judgment
- Domestic Relations
- Juvenile
- Medical Malpractice
- Personal Injury
- Probate
- Other (describe): _____

3. Do you know of another case pending before this court that raises the same issue or issues?

Yes No

If yes, please cite the case(s): _____

4. Does the appeal turn on an interpretation or application of a particular case or statute?

Yes No

If yes, please cite the case(s) or statute(s): See attached

5. How would you characterize the extent of your settlement discussions before judgment?

- None
- Minimal
- Moderate
- Extensive

6. Have settlement discussions taken place since the judgment or order appealed from was entered?

Yes No

38.

7. Would a prehearing conference assist the resolution of this matter?

Yes No Maybe

Please explain (optional): Mother has rejected father's efforts at mediation

8. Briefly summarize the assignments of error presently anticipated to be raised on appeal. (Attach a separate sheet if necessary.)

See attached

Kevi Cronin, Attorney at Law

Appellant or Attorney for Appellant

The primary purpose of a prehearing conference is to encourage the parties to explore any possibilities there may be for settlement of the case before incurring additional expenses or, if that is not possible, to limit the issues.

Loc.App.R. 20(E) provides that this court may assess reasonable expenses, including attorney fees, assess all or a portion of the appellate costs, or dismiss the appeal for failure to comply with provisions of this Rule.

[Amended effective July 1, 1999.]

Docketing Statement (Supplement)

4. Does the appeal turn on the interpretation or application of a particular case or statute? Yes

- a. Non-Custodial Parent Access to Medical Information of Child, ORC 3109.051(H)(1)(2);
- b. Cuyahoga Juvenile Rule 9(A) "In all appropriate cases formal court action should be avoided and other community resources utilized to ameliorate situations brought to the attention of the court."
- c. Causes for Injunction, ORC 2727.02

8. Trial Court erred in approving mother's restraining order, prohibiting father from contacting doctors for information on daughters medical condition and proposed treatment, information he entitled to under ORC §3109.051(H)(1) and (2) and Florida law under Florida Patient's Bill of Rights.

A non-custodial parent is entitled to access, "under the same terms and conditions under which access is provided to the residential parent, to any record that is related to the child and to which the residential parent of the child legally is provided access."

Ohio Rev. Code §3109.051(H)(1).

"Any keeper of any record who knowingly fails to comply with division (H) of this section or with any order issued pursuant to division (H)(1) of this section is in contempt of court." **Ohio Rev. Code §3109.051(H)(2).**

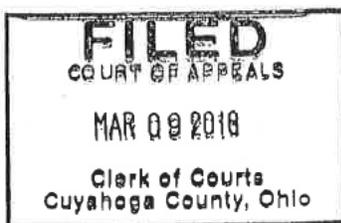
Trial Court erred in rejecting father's Motion for Temporary Restraining Order to prohibit mother from transporting child out of Cuyahoga County for medical care of his daughter without court approval.

IN THE EIGHTH DISTRICT COURT OF APPEALS,
CUYAHOGA COUNTY, OHIO

IN THE MATTER OF:
OLIVIA MORITZ
(DOB: 1 12 2007)

CASE NO. CA-16-104213

JUDGE



APPEAL TO 8TH DISTRICT COURT OF
APPEALS; EMERGENCY PROCEEDINGS

MOTION TO STAY TRIAL COURT
AND SET TEMPORARY INJUNCTION

Father Michael Moritz, through counsel, files this appeal to the Eight District Court of Appeals, Cuyahoga County, Ohio of the February 22, 2016 decision of Magistrate Hilow, Cuyahoga County Court of Common Pleas, Juvenile Division. Father's Objections to Magistrate's Findings were over-ruled by the Court on March 7, 2016, approving the Magistrate's ruling. The Court Judgment Entries are attached. Father requests to stay mother's restraining order against him, to allow the gathering of medical information, and, further, restrain mother from proceeding to travel or engage in the improvident medical care for their disabled nine year-old daughter.

The Magistrate's decision approved mother's Permanent Restraining Order against father, barring his contacting medical care providers offering or suggesting medical services for his nine year-old disabled daughter and rejected father's Temporary Restraining Order against Mother, which would have temporarily prohibited travel to Florida to utilize medical services of Dr. Druor Paley, Paley Institute, West Palm Beach, Florida. Mother has unilaterally chosen the medical procedures of Dr. Druor Paley, a radical and experimental procedure that would require years of follow-up care, devastate the family and is contrary to doctors' advice at the Cleveland Clinic. The scope of any insurance is, at this point, unclear. The Clinic doctors have provided orthopedic medical care for Olivia for six years and are her longest standing care providers. The Juvenile Court took no action on father's petition to amend the parenting agreement, to create a shared parenting arrangement and stronger ability to contribute to the medical decision-making regarding Olivia, filed February 9, 2016.

Mother is believed to be unemployed, with father working and providing 70% of the costs of

Judge:

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medical insurance. Mother has scheduled a medical procedure with Dr. Paley for March 17, 2016, which father opposes, and may fly as early as March 10th to Florida, raising the urgency of this motion. The Paley medical plan would involve 10-12 weeks of care in Florida and 10-12 weeks of care in Cleveland, removing Olivia from school, leading to medical bills in the hundreds of thousands of dollars and would certainly result in father's bankruptcy. The Paley plan is just the first installment, setting a course of multi-year, multi-surgical treatment and is not in Olivia's best interests.

A very brief overview is attached to provide added information.

Respectfully Submitted;



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A copy of this Motion was sent electronically to anne@annesmagyaros.com on this day, March, 9th 2016.



KEVIN CRONIN, Attorney for Michael Moritz

highly functional expected outcome. Dr. Herzenberg of the Rubin Institute, Sinai Hospital, Baltimore, Maryland, in a medical counseling session with both parents, described that the medical procedures are comparatively simple and straight-forward and covered by medical insurance.

2. **Option Two: Lengthening and Reconstructing the Joint.** An alternative, would involve a series of procedures over many years in which the bone is broken, with bony material added to lengthen the joint, and allowed to "stitch" together and heal, before being broken again to repeat the process. The number of steps and cost are unclear. Upon information and belief an application for a waiver to provide insurance is pending, but the scope of the application is uncertain. As 9 year-old Olivia matures and grows, the process would resume again. Two leading providers of the lengthening/reconstruction procedure have been identified:

- Dr. Druor Paley, of the Paley Institute, St. Mary's Hospital (West Palm Beach, Florida) (referred to hereafter as "Paley"), working locally with Dr. Raymond Liu of University Hospital (Cleveland, Ohio); and
- Dr. John Herzenberg of the Rubin Institute, Sinai Hospital (Baltimore, Maryland) (referred to hereafter as "Herzenberg" or "Rubin").

Doctors Paley and Herzenberg apparently developed the processes and worked together in Baltimore, but do not cooperate or work together at this time.

INFORMATION GATHERING THWARTED: In order to gather information to better understand the care proposed for Olivia, father sought information from Dr. Paley, the Paley Institute and other medical providers, but was thwarted by mother on her own and with Paley, as well Paley and Paley Institute on their own (see father's affidavit, attached). Without the information, father's efforts at mediation or amending the decision-making of the parenting agreement are rendered meaningless.

The Trial Court approval of mother's restraining order, prohibiting father from contacting doctors for information on his daughter's medical condition and proposed treatment, information he entitled to under both Ohio and Florida law, ORC §3109.051(H)(1) and (2) and the Florida Patient's Bill of Rights.

A non-custodial parent is entitled to access, "under the same terms and conditions under which access is provided to the residential parent, to any record that is related to the child and to which the residential parent of the child legally is provided access."
Ohio Rev. Code §3109.051(H)(1).

"Any keeper of any record who knowingly fails to comply with division (H) of this section or with any order issued pursuant to division (H)(1) of this section is in contempt of court." **Ohio Rev. Code §3109.051(H)(2).**

MEDIATION THWARTED: Father's action to contribute to his daughter's care and address an issue in dispute, whether to amend the parenting agreement, have included mediation through the Cleveland Mediation Center. Father's Motion for a Temporary Restraining Order noted that mediation is a

preferred option under Juvenile Rule 9(A), "Court action to be avoided. In all appropriate cases formal court action should be avoided and other community resources utilized to ameliorate situations brought to the attention of the court." Father's mediation efforts began in December 2015, but mother refused to be involved, canceling a session the day before it was scheduled to occur.

Father's right to modify the current parenting agreement or invoke mediation are rendered meaningless by the undermining of his right under Ohio law to medical information about his daughter (Ohio Rev. Code §3109.051(H)(1) and (2) and the Florida Patient Bill of Rights (which is attached).

PROCEEDING WITH MEDICAL CARE: Father, due to Dr. Paley's and the Paley Institute's conduct and misinformation, has no confidence in the Paley Institute and informs them of his conclusion. A litany of obstruction, misinformation and non-information is described in father's affidavit (attached).

Father's conclusion is a family solution is urgently needed, a view supported by doctors and the University Hospital Pediatric Ethics Office. University Hospital is engaged as they would be the site of Olivia's Cleveland-based care, conducting surgical operations on Olivia to remove the lengthening apparatus and braces under the Paley care plan. The UH letter offering to assist in family counseling is attached.

There is no emergency that compel Olivia's surgery with Dr. Paley and the Paley Institute in March, 2016 or mother leaving Cuyahoga County this week. Dr. Paley described a range, of ten-twelve weeks of care in Florida and an additional ten to twelve weeks of care in Cleveland. At the trial court, mother's counsel argued the schedule could return Olivia to school in the fall. However, the Paley plan would remove Olivia from school now. The plan for twenty four combined weeks of surgery and care will necessitate Olivia missing school at some point. Further, if twenty-four weeks, rather than twenty or twenty-two weeks of care are required, of care are involved, Olivia would still miss the start of school in fall 2016 under the needlessly accelerated Paley March schedule.

To clarify, Olivia's father supports resolution through consultation involving the entire family. He would support a lengthening procedure with Dr. Herzenberg, who co-developed the lengthening procedures with Dr. Paley, but has no confidence in Dr. Paley or the Paley Institute due to their misinformation and obstruction. Father could also support amputation if that is the recommendation of doctors who have worked with Olivia the longest and is the result of a family decision-making process.

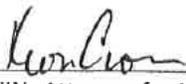
Respectfully Submitted;



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KEVIN CRONIN, Attorney for Michael Moritz

IN THE COURT OF COMMON PLEAS, JUVENILE DIVISION
CUYAHOGA COUNTY, OHIO

2015 FEB -4 P 2-12
CLERK OF COURTS

IN THE MATTER OF:)
OLIVIA MORITZ)
(DOB: 1 12 2007))
CASE NO. CU 08131418)
JUDGE THOMAS F. O'MALLEY)
AFFIDAVIT OF FATHER MICHAEL MORITZ,)
IN SUPPORT OF TEMPORARY RESTRAINING)
ORDER)

MICHAEL MORITZ, being duly sworn, deposes and says the following:

- 1) I am the father of Olivia Moritz, a nine year-old child, born January 12, 2007. Olivia was born with substantial deformity of the lower left leg called fibular hemimelia.
- 2) Mother, Kathryn Vankirk (formerly Kathryn Murch), and I were legally separated in August 2009.
- 3) While Kathryn is residential parent, since our separation, we have enjoyed a generally successful parenting structure, and I have utilized strong periods of supervision, participating in Olivia's growth and maturation. I have been very engaged in my daughter's life, health and medical needs, attending Olivia's medical appointments, meeting and talking with current or potential medical staff and researching Olivia's medical options extensively.
- 4) Mother has scheduled to travel to Florida with Olivia to address our daughter's medical needs on her own and, without my knowledge or input, for lengthening and reconstruction surgery with the Paley Institute, West Palm Beach, Florida on March 17, 2016. The appointment was apparently made in October, with Olivia's knowledge and concealed from me until I learned about the appointment on November 22, 2015. Since learning of the appointment in November, I have been working and researching to identify better medical options for Olivia and scheduling mediation to decide what's best for our daughter. Olivia said mother directed her to keep the appointment a secret and not to tell me.
- 5) In late 2014, during a consultation with Dr. Tracy Ballock, of the Cleveland Clinic, Olivia's Orthopedic Surgeon of more than five years, mother, Olivia and I learned that Olivia's condition had changed to warrant other treatment options. He recommended a Syme Amputation of her foot, with prosthetic fitting, describing this procedure as associated with a relatively short recovery time and a highly functional expected outcome. Both mother and I began researching Olivia's care options.
- 6) Mother, Olivia and I have received medical information from four hospitals and related medical

facilities, including: the Cleveland Clinic, University Hospitals, Sinai Hospital (Baltimore, Maryland) and the Paley Institute (West Palm Beach, Florida). Both parents agree that Olivia's future medical treatment includes two widely different options: 1) amputation and 2) lengthening reconstruction of the lower leg, ankle and foot. Both surgical options are elective. The amputation is covered by insurance, while the full scope of any insurance for reconstruction is unclear.

- 7) Mother and I disagree on the appropriate medical care for Olivia at this time. Further, Olivia, on more than two occasions and before both parents, has expressed her preference for amputation, rather than the series of lengthening/reconstruction surgeries and recovery over many years. Olivia has expressed deep frustration with her parents' disagreement on the subject of her treatment. Mother insists on making the decision on her own.
- 8) In a June 2015 consultation involving both parents and Olivia's orthopedic surgeon of five years, Dr. Tracy Ballock of the Cleveland Clinic, we learned of his suggestion we defer any action until all individuals are on the same page, that Olivia will not do well and that no doctor will want to do a procedure until all are in agreement. Other doctors have expressed the same recommendation. Dr. Ballock repeated the comment in a June 26th email to mother, suggesting that we defer on any action until all are on the same page. Further, Dr. Ballock has suggested Olivia should visit a "clinical psychologist."
- 9) Beginning in June 2015, my efforts to address these issues through mediation and/or family counseling, as encouraged under our Ohio law, have been unsuccessful, with mother canceling a scheduled mediation session on December 3rd, one day prior to the meeting. As a result of our disagreement and mother's refusal to engage in mediation, I believe my rights as father are being impeded and Olivia all family members are under extreme emotional distress. I believe this to be very unfair to Olivia. Communications have been very difficult on this critical subject.
- 10) In addition to mediation, I have asked for an ethics review by University Hospitals, Pediatric Clinical Ethics Panel (response letter is attached), as Dr. Liu of University Hospital will be responsible for the Cleveland monitoring and surgical removal of the Paley brace on Olivia's leg. The ethics group has agreed to participate in family-based meetings to address the medical issues.
- 11) Paley has presented no viable financial solution to me for the Paley lengthening/reconstruction surgery, though I understand the information is required to be provided when requested, according to the Florida Patient Bill of Rights, which was provided to me by the Florida Board of Health (see Bill of Rights requirements, attached). The Paley procedure would likely cost in the hundreds of thousands of dollars, far in excess of the resources of mother and father, and insurance coverage is unclear. I believe mother is not currently working and I would likely face bankruptcy. I understand the amputation and prosthetic fitting option at the Cleveland Clinic would be covered by current insurance.
- 12) Both parents attended an August 6, 2015 consultation at the Rubin Institute/Sinai Hospital in Baltimore, Maryland, with Dr. John Herzenberg, provided at no cost. Dr. Herzenberg and Dr. Paley are credited with developing the lengthening procedures.

- 13) Dr. Herzenberg said it was essential for Olivia to be included in this medical decision and that Syme amputees are "very functional with one surgery" and that lengthening and reconstruction for Olivia's fibular hemimelia type is difficult for the patient and family. I wrote down these comments at the time in my meeting notes.
- 14) In a separate consultation involving father, mother, Olivia and Orthopedic Surgeon, Dr. Thomas Kuivila of the Cleveland Clinic, Kuivila I stated we were uncertain when asked for Olivia's views. Later, Olivia repeated, when asked which option is the better one for her, said amputation adding (addressing her mother) "it doesn't mean I don't love you."
- 15) After an August 31, 2015 scheduled visit to Leimkuhler Prosthetics in Cleveland, attended by both parents and Olivia, the three of us ate dinner together at a restaurant. Olivia was asked how she felt and what she thought about our treatment options. She drew a line with her index finger across her left ankle. When asked if that meant amputation of her foot she nodded her head "yes."
- 16) Mother has continued to discuss her preference for lengthening/reconstruction and has said Olivia will not have her foot amputated. On November 23, 2015, Olivia stated that she want to do leg reconstruction in Florida because "my mom" and I would be most comfortable there. She also expressed that there are also places like Disney World and sea world for me to visit.
- 17) I explained to Olivia that this treatment decision is for her parents to make and yet we do want to know what she thinks and how she feels about our options and that we love her dearly and that even though her parents disagree about what to do, if she chose to have lengthening and reconstruction, knowing it's realities, I would not be disappointed or upset with her at all and that I would support her fully forever. However, Olivia is a very bright child and I believe she is being misled, encouraged or incentivized to support mother's Paley decision. Based on my observations, Olivia is under a great deal of stress.
- 18) On March 26, 2015, a consultation appointment with the Paley Institute in Florida was confirmed by all parties for May 15, 2015 at 2:00 pm to review the lengthening/reconstruction surgical option. The Paley Institute charged \$1,050.00, which was paid by mother and father and not covered by insurance. I was only informed by Mother two to three weeks prior that this consultation appointment was scheduled and was never given an address for the appointment by Mother.
- 19) At 4:45 PM on May 14th, the day prior to the appointment, I received a call to confirm our appointment for the next day at 8:30 AM and was informed Dr. Paley was to catch a plane at 10:00 am. I contacted mother immediately by phone her understandable, inconsolable horror, sobbing and dismay that we would likely not have time to have a productive meeting with the doctor. Upon arrival, we learned that Paley staff insisted they called us two weeks prior to describe Dr. Paley's conflict and did not apologize to me for any inconvenience or confusion. Kate and I both informed her that we did not receive any such calls or other related correspondence.
- 20) We met with Dr. Druor Paley for what I considered to be a frustratingly short time and were told by Physicians Assistant John Robb, who conducted the bulk of the consultation, that we could contact him with any further questions.

- 21) After receiving the consultation notes from the Paley Institute, I prepared ten questions for the Paley consulting team, sent to the Paley Institute on June 8, 2015. I was informed that we should return for another paid consultation for these questions to be answered. My questions included clarification of Dr. Paley's surprisingly bold statements in the consultation notes that "...she will have a completely functioning normal foot...", later adding "...completely normal functioning joint later on." The notes included mathematical errors grossly overestimating the amount lengthening required per day by nearly 4000%.
- 22) In conversations, I learned that Dr. Paley's statements regarding a normal, functioning foot and ankle were disputed by Dr. Liu of University Hospital, Dr. Ballock and Dr. Kuivala at the Cleveland Clinic and Dr. John Herzenberg of the Rubin Institute (Baltimore, Maryland) and recorded these comments in my notes.
- 23) I filed a complaint against Dr. Paley and the Paley Institute. In response, I received a revised version of the consultation notes, which include many changes and corrections. However, the document was unsigned and did not indicate a change had been made to this medical document, as is customary in amending and or altering medical records. Disappointingly, some of my most important questions remained unanswered, while Dr. Paley's bold claims for Olivia's fully functioning recovery remained.
- 24) I prepared a formal complaint with the Florida Department of Health and Florida Board of Medicine describing the experiences with the Paley Institute. During the investigation of medical options, we have visited a variety of medical facilities. All of them who have seen or treated Olivia have produced, on my request, a Code of Ethics including: Metro Health Medical Center (Cleveland, OH), Shriners Hospitals for Children (Erie, PA), Cleveland Clinic (Cleveland, OH), University Hospitals (Cleveland, OH) and Sinai Hospital (Baltimore, MD.) Upon verbal request on multiple occasions, the Paley Institute failed for three months to produce equivalent documents, which I understand, itself, is a violation of the Florida Patient's Bill of Rights. Instead, the Paley Institute referred my family to "...the State" on October 23, 2015.
- 25) I requested an itemized billing statement for the series of medical procedures to lengthen Olivia's leg, a billing statement I am entitled to under the Florida Patient Bill of Rights (see Florida Bill of Rights, attached). The Paley Institute did not provide such a statement, submitting an "estimate of charges" for the first procedure only.
- 26) I have very little or no confidence and trust in the staff of the Paley Institute and I oppose any treatment with them. The experiences with the Paley Institute has raised more questions than answers for me and has confused our efforts to make an informed decision about Olivia's life-changing treatment options. Personal knowledge
- 27) In our conversation, Olivia has repeatedly requested that I attend her medical treatment, wherever it may be conducted.

- 28) I understand this process may take several months and I would not be able to be present during the lengthy lengthening and reconstruction surgery and recovery required on site in Florida, due to travel distance and financial burden as a home owner and business owner.
- 29) The lengthening medical procedure and rehabilitation protocol was developed by Dr. Herzenberg and Dr. Paley at Sinai Hospital, Baltimore, Maryland.
- 30) If, through civil discussions, we are able to agree that lengthening and reconstruction surgery is in Olivia's best interest, with Olivia's agreement, I would consent to such treatment at the Rubin Institute for Advanced Orthopedics at Sinai Hospital Baltimore, Maryland under the direction of Dr. John Herzenberg. I could be present in Baltimore due to reduced travel distance, though the Rubin Institute, as well as the Paley Institute, will not accept payment from Olivia's current medical plan coverage and it is unknown how such treatment would be paid for as the cost is expected to be hundreds of thousands of dollars. Difficult financing for this treatment, whether at the Rubin Institute or the Paley Institute, remains unanswered.
- 31) As I have sought to clarify, I do not support surgery for Olivia at the Paley Institute and if lengthening surgery is to be pursued, I support surgery with Dr. Herzenberg at the Rubin Institute, Mt. Sinai Hospital, Baltimore, Maryland. I would support amputation at the Cleveland Clinic under the direction of Dr. Ballock if that option is agreed through family discussion and the recommendations of Cleveland Clinic doctors who have known and worked with Olivia the longest to be in Olivia's best interest.
- 32) On January 11, 2016, I sent a letter to the Paley Institute informing them and their affiliates that I do not consent to any treatment for Olivia at the Paley Institute (letter attached).

Further affiant sayeth naught.


Michael Moritz

SWORN TO BEFORE ME and subscribed in my presence, this 14 day of March, 2016.



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appropriate medical personnel.

3. A patient has the right to a prompt and reasonable response to a question or request. A health care facility shall respond in a reasonable manner to the request of a patient's health care provider for medical services to the patient. The health care facility shall also respond in a reasonable manner to the patient's request for other services customarily rendered by the health care facility to the extent such services do not require the approval of the patient's health care provider or are not inconsistent with the patient's treatment.

4. A patient in a health care facility has the right to retain and use personal clothing or possessions as space permits, unless for him or her to do so would infringe upon the right of another patient or is medically or programmatically contraindicated for documented medical, safety, or programmatic reasons.

(b) *Information.*—

1. A patient has the right to know the name, function, and qualifications of each health care provider who is providing medical services to the patient. A patient may request such information from his or her responsible provider or the health care facility in which he or she is receiving medical services.

2. A patient in a health care facility has the right to know what patient support services are available in the facility.

3. A patient has the right to be given by his or her health care provider information concerning diagnosis, planned course of treatment, alternatives, risks, and prognosis, unless it is medically inadvisable or impossible to give this information to the patient, in which case the information must be given to the patient's guardian or a person designated as the patient's representative. A patient has the right to refuse this information.

4. A patient has the right to refuse any treatment based on information required by this paragraph, except as otherwise provided by law. The responsible provider shall document any such refusal.

5. A patient in a health care facility has the right to know what facility rules and regulations apply to patient conduct.

6. A patient has the right to express grievances to a health care provider, a health care facility, or the appropriate state licensing agency regarding alleged violations of patients' rights. A patient has the right to know the health care provider's or health care facility's procedures for expressing a grievance.

7. A patient in a health care facility who does not speak English has the right to be provided an interpreter when receiving medical services if the facility has a person readily available who can interpret on behalf of the patient.

8. A health care provider or health care facility shall respect a patient's right to privacy and should refrain from making a written inquiry or asking questions concerning the ownership of a firearm or ammunition by the patient or by a family member of the patient, or the presence of a firearm in a private home or other domicile of the patient or a family member of the patient. Notwithstanding this provision, a health care provider or health care facility that in good faith believes that this information is relevant to the patient's medical care or safety, or safety of others, may make such a verbal or written inquiry.

9. A patient may decline to answer or provide any information regarding ownership of a firearm by the patient or a family member of the patient, or the presence of a firearm in the domicile of the patient or a family member of the patient. A patient's decision not to answer a question relating to the presence or ownership of a firearm does not alter existing law regarding a physician's authorization to choose his or her patients.

10. A health care provider or health care facility may not discriminate against a patient based solely upon the patient's exercise of the constitutional right to own and possess firearms or ammunition.

11. A health care provider or health care facility shall respect a patient's legal right to own or possess a

firearm and should refrain from unnecessarily harassing a patient about firearm ownership during an examination.

(c) *Financial information and disclosure.*—

1. A patient has the right to be given, upon request, by the responsible provider, his or her designee, or a representative of the health care facility full information and necessary counseling on the availability of known financial resources for the patient's health care.

2. A health care provider or a health care facility shall, upon request, disclose to each patient who is eligible for Medicare, before treatment, whether the health care provider or the health care facility in which the patient is receiving medical services accepts assignment under Medicare reimbursement as payment in full for medical services and treatment rendered in the health care provider's office or health care facility.

3. A primary care provider may publish a schedule of charges for the medical services that the provider offers to patients. The schedule must include the prices charged to an uninsured person paying for such services by cash, check, credit card, or debit card. The schedule must be posted in a conspicuous place in the reception area of the provider's office and must include, but is not limited to, the 50 services most frequently provided by the primary care provider. The schedule may group services by three price levels, listing services in each price level. The posting must be at least 15 square feet in size. A primary care provider who publishes and maintains a schedule of charges for medical services is exempt from the license fee requirements for a single period of renewal of a professional license under chapter 456 for that licensure term and is exempt from the continuing education requirements of chapter 456 and the rules implementing those requirements for a single 2-year period.

4. If a primary care provider publishes a schedule of charges pursuant to subparagraph 3., he or she must continually post it at all times for the duration of active licensure in this state when primary care services are provided to patients. If a primary care provider fails to post the schedule of charges in accordance with this subparagraph, the provider shall be required to pay any license fee and comply with any continuing education requirements for which an exemption was received.

5. A health care provider or a health care facility shall, upon request, furnish a person, before the provision of medical services, a reasonable estimate of charges for such services. The health care provider or the health care facility shall provide an uninsured person, before the provision of a planned nonemergency medical service, a reasonable estimate of charges for such service and information regarding the provider's or facility's discount or charity policies for which the uninsured person may be eligible. Such estimates by a primary care provider must be consistent with the schedule posted under subparagraph 3. Estimates shall, to the extent possible, be written in language comprehensible to an ordinary layperson. Such reasonable estimate does not preclude the health care provider or health care facility from exceeding the estimate or making additional charges based on changes in the patient's condition or treatment needs.

6. Each licensed facility not operated by the state shall make available to the public on its Internet website or by other electronic means a description of and a link to the performance outcome and financial data that is published by the agency pursuant to s. [408.05\(3\)\(k\)](#). The facility shall place a notice in the reception area that such information is available electronically and the website address. The licensed facility may indicate that the pricing information is based on a compilation of charges for the average patient and that each patient's bill may vary from the average depending upon the severity of illness and individual resources consumed. The licensed facility may also indicate that the price of service is negotiable for eligible patients based upon the patient's ability to pay.

7. A patient has the right to receive a copy of an itemized bill upon request. A patient has a right to be given an explanation of charges upon request.

(d) *Access to health care.*—

1. A patient has the right to impartial access to medical treatment or accommodations, regardless of race, national origin, religion, handicap, or source of payment.
2. A patient has the right to treatment for any emergency medical condition that will deteriorate from failure to provide such treatment.
3. A patient has the right to access any mode of treatment that is, in his or her own judgment and the judgment of his or her health care practitioner, in the best interests of the patient, including complementary or alternative health care treatments, in accordance with the provisions of s. 456.41.

(e) *Experimental research.*—In addition to the provisions of s. 766.103, a patient has the right to know if medical treatment is for purposes of experimental research and to consent prior to participation in such experimental research. For any patient, regardless of ability to pay or source of payment for his or her care, participation must be a voluntary matter; and a patient has the right to refuse to participate. The patient's consent or refusal must be documented in the patient's care record.

(f) *Patient's knowledge of rights and responsibilities.*—In receiving health care, patients have the right to know what their rights and responsibilities are.

(5) **RESPONSIBILITIES OF PATIENTS.**—Each patient of a health care provider or health care facility shall respect the health care provider's and health care facility's right to expect behavior on the part of patients which, considering the nature of their illness, is reasonable and responsible. Each patient shall observe the responsibilities described in the following summary.

(6) **SUMMARY OF RIGHTS AND RESPONSIBILITIES.**—Any health care provider who treats a patient in an office or any health care facility licensed under chapter 395 that provides emergency services and care or outpatient services and care to a patient, or admits and treats a patient, shall adopt and make available to the patient, in writing, a statement of the rights and responsibilities of patients, including the following:

SUMMARY OF THE FLORIDA PATIENT'S BILL OF RIGHTS AND RESPONSIBILITIES

Florida law requires that your health care provider or health care facility recognize your rights while you are receiving medical care and that you respect the health care provider's or health care facility's right to expect certain behavior on the part of patients. You may request a copy of the full text of this law from your health care provider or health care facility. A summary of your rights and responsibilities follows:

A patient has the right to be treated with courtesy and respect, with appreciation of his or her individual dignity, and with protection of his or her need for privacy.

A patient has the right to a prompt and reasonable response to questions and requests.

A patient has the right to know who is providing medical services and who is responsible for his or her care.

A patient has the right to know what patient support services are available, including whether an interpreter is available if he or she does not speak English.

A patient has the right to know what rules and regulations apply to his or her conduct.

A patient has the right to be given by the health care provider information concerning diagnosis, planned course of treatment, alternatives, risks, and prognosis.

A patient has the right to refuse any treatment, except as otherwise provided by law.

A patient has the right to be given, upon request, full information and necessary counseling on the availability of known financial resources for his or her care.

A patient who is eligible for Medicare has the right to know, upon request and in advance of treatment, whether the health care provider or health care facility accepts the Medicare assignment rate.

A patient has the right to receive, upon request, prior to treatment, a reasonable estimate of charges for medical care.

A patient has the right to receive a copy of a reasonably clear and understandable, itemized bill and, upon request, to have the charges explained.

A patient has the right to impartial access to medical treatment or accommodations, regardless of race, national origin, religion, handicap, or source of payment.

A patient has the right to treatment for any emergency medical condition that will deteriorate from failure to provide treatment.

A patient has the right to know if medical treatment is for purposes of experimental research and to give his or her consent or refusal to participate in such experimental research.

A patient has the right to express grievances regarding any violation of his or her rights, as stated in Florida law, through the grievance procedure of the health care provider or health care facility which served him or her and to the appropriate state licensing agency.

A patient is responsible for providing to the health care provider, to the best of his or her knowledge, accurate and complete information about present complaints, past illnesses, hospitalizations, medications, and other matters relating to his or her health.

A patient is responsible for reporting unexpected changes in his or her condition to the health care provider.

A patient is responsible for reporting to the health care provider whether he or she comprehends a contemplated course of action and what is expected of him or her.

A patient is responsible for following the treatment plan recommended by the health care provider.

A patient is responsible for keeping appointments and, when he or she is unable to do so for any reason, for notifying the health care provider or health care facility.

A patient is responsible for his or her actions if he or she refuses treatment or does not follow the health care provider's instructions.

A patient is responsible for assuring that the financial obligations of his or her health care are fulfilled as promptly as possible.

A patient is responsible for following health care facility rules and regulations affecting patient care and conduct.

History.—s. 1, ch. 91-127; s. 65, ch. 92-289; s. 656, ch. 95-148; s. 21, ch. 98-89; s. 178, ch. 98-166; s. 64, ch. 99-397; s. 7, ch. 2001-53; s. 2, ch. 2001-116; s. 3, ch. 2004-297; s. 12, ch. 2006-261; s. 3, ch. 2008-47; s. 2, ch. 2011-112; s. 1, ch. 2011-122; s. 48, ch. 2012-5.

MRN: 03382581
Visit: D-75412534
Age: 9y1m (12-Jan-2007)

MORITZ, OLIVIA K
Gender: Female

UH Ambulatory Clinics
Current Location: Athena
Doctors Office Visits

Response - UH Rainbow
Center for
Pediatric
Ethics

2/22/16

Clinical Event Note-Pediatric Ethics [Charted Location: Athena Doctors Office Visits] [Date of Service: 22-Feb-2016 11:02, Authored: 22-Feb-2016 11:02] - for Visit: D-75412534. Complete, Entered, Signed in Full, General

Event:

Topic: Pediatric Ethics

Details:

Question:

Should a limb lengthening surgery be performed on an 8 year old female if parents cannot come to agreement about which surgeon should perform the procedure and which procedure should be performed?

Information:

Referral received by Mr. Mike Mortiz, Olivia Mortiz's father who expresses that he wants University Hospitals to put a stop to a surgery that his daughter is scheduled for at the Paley Institute in Florida.

Information for this consult was provided by Olivia's father, Mike Mortiz, mother Kate VanKirk, Dr Raymond Liu and Olivia's medical records.

Olivia is an 8 year old girl who is diagnosed with fibular hemimelia. Her parents have sought recommendations for treatment at Shriners Hospital and the Cleveland Clinic Foundation. Olivia is now under the care of Dr. Raymond Liu in the Department of Orthopedics at Rainbow Babies and Children's Hospital. Olivia has undergone AFO brace therapy and uses a shoe life but is at this point due to her age and growth where surgical interventions are being considered. The surgical options the parents have been presented with include limb amputation and limb lengthening. Limb amputation is performed at many medical facilities. The limb lengthening surgery that is being considered for Olivia is performed by only a few surgeons in the United States. The parents and Olivia have met with both Dr. John Herzenberg in Baltimore, Maryland and Dr. Dror Paley at the Paley Institute in West Palm Beach, Florida. Olivia's mother wants her daughter to have the surgery by Dr. Dror Paley. She states that Dr. Paley has more experience than Dr. Herzenberg with the procedure, performing several hundred limb lengthening surgeries per year. She was also impressed with The Paley Institute and the services provided to their patients and families. Per Ms. VanKirk states the Institute offers physical and occupational therapies, group counseling, family and patient support groups. She felt the institute was "kid friendly." Mr. Moritz states he does not want the surgery performed by Dr. Paley, he states that Dr. Paley has lied to his family in regards to telling them that Olivia's ankle will be normal. Mr. Moritz vacillates about which procedure should be performed, stating that amputation is reasonable and is performed more frequently than limb lengthening. He does state he is willing to consider leg lengthening with a surgeon other than Dr. Paley.

Olivia's parents are divorced. Her mother is the custodial parent but they have a shared parenting agreement. Olivia spends time with both parents. Olivia is the only living child of Mr. Mortiz and Ms VanKirk together. Olivia is a twin and her twin brother died as an infant. Olivia also has a half-brother who is 20 years old and the child of her mother. Both Olivia's parents describe her as a happy child.

Assess:

Requested by: Pope, Debra (FILE CLK), 23-Feb-2016 09:50

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MRN: 03382581
Visit: D-75412534
Age: 9y1m (12-Jan-2007)

MORITZ, OLIVIA K
Gender: Female

UH Ambulatory Clinics
Current Location: Athena
Doctors Office Visits

Both procedures are reasonable options for Olivia, both have their own risks and benefits. Amputation is permanent removal of a limb whereas limb lengthening surgery requires several surgeries and a long recovery period with the goal to salvage the limb. Both options have been presented by Dr. Liu but the decision as to which surgery to proceed with needs to be a decision of the parents since they know their child the best. The parents at this time cannot come to consensus as to which surgery is the best for their daughter and by which surgeon. However, they both have said separately that they want their daughter to have the most functional life she can.

Recommendation/Plan

I have explained to both parents that my recommendation is for them to enter counseling or mediation since they are having such difficulty coming to an agreement about not only which surgeon but also which procedure they feel would be in the best interest of their daughter. As an ethicist, I am in no position to make a recommendation about the surgery or the surgeons, Dr. Liu has presented the parents with more than adequate information to make an informed choice. What is most important is that the parents work together for the greater good of their daughter. If a meeting with the parents and team would be beneficial I would be available if there are clear goals identified for the purpose of the meeting.

Provider / Team Contact Information:

Provider / Team Pager Number: 33216

Electronic Signatures:

Kessler, Ann R. (LISW-S) (Signed 22-Feb-2016 11:36)

Authored: Event, Provider / Team Contact Information

Last Updated: 22-Feb-2016 11:36 by Kessler, Ann R. (LISW-S)

Requested by: Pope, Debra (FILE CLK), 23-Feb-2016 09:50

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Rainbow Center for Pediatric Ethics

Children Deserve Special Consideration

Medical Director: Anne Lyren, MD

Our mission at the Rainbow Center for Pediatric Ethics (RCPE) is to promote better understanding of our ethical responsibilities to children. The RCPE will impart commitment, credibility, and visibility to the role of pediatric ethics at University Hospitals Rainbow Babies & Children's Hospital and Case Western Reserve University School of Medicine. Our presence will provide physical and emotional space for persons of differing viewpoints to come together, in a non-threatening environment, to help determine what is in the best interest of the child.

The center will stimulate a wide range of ethics programs and activities in support of programmatic initiatives at the Case School of Medicine and UH Rainbow Babies & Children's Hospital, thereby becoming an integral and vibrant contributor to the medical community.

The center will accomplish its mission by achieving four primary objectives.

- **Education:** To educate students, health care professionals and the public about pediatric ethical issues involving children and their families
- **Consultation:** To provide consultation assisting clinicians, families, and children confronted with ethical dilemmas that arise in health care and pediatric research
- **Research and Academic Inquiry:** To foster research and scholarship in pediatric ethics
- **Advocacy and Community Outreach:** To advocate for the well-being of children by bringing the ethical dimensions of pediatric health care to the community at large.

Ethics Consultations

The Rainbow Ethics Committee has been active for more than a decade and is the current mechanism for grappling with many of the ethical challenges encountered at Rainbow.

The committee, co-chaired by Dr. Anne Lyren and Lauren McAilley, operates as part of the Clinical Ethics Program at University Hospitals of Cleveland and serves in an advisory capacity to clinicians, families and children. The committee functions as a multi-disciplinary sounding board for some of the most troubling cases at Rainbow.

The RCPE provides organizational support to the Rainbow Ethics Committee, arranging both the scheduled monthly meetings and necessary emergency case review meetings. In this way, the RCPE provides a much-needed infrastructure for this important hospital function.

Patients, their families, health care professionals or other members of the hospital staff may request an ethics consent by calling (216) 844-3536 or [Refer Online today](#)

Research and Academic Inquiry

Ethics research is currently underway at UH Rainbow Babies & Children's Hospital. The RCPE faculty meets monthly to review progress in research projects and plan for new research and programmatic efforts. In addition, the RCPE will provide advisory support to University Hospitals and the Department of Pediatrics through membership on the UH and Departmental IRB committees and will be accessible to all faculty, fellows, residents and nurses seeking guidance or consultation with

Background: Rainbow Center for Pediatric Ethics Research Education

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respect to pediatric research issues. The RCPE will also be available to faculty engaging in large, multidisciplinary projects or programs for children.

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THE STATE OF OHIO,)
) SS: MAGISTRATE ELEANORE E. HILOW
COUNTY OF CUYAHOGA.)

IN THE COURT OF COMMON PLEAS
JUVENILE DIVISION

In the matter of:)
)
OLIVIA MORITZ) Case No. CU 08131418
) MAGISTRATE'S DECISION

Audio-recorded hearing held before Magistrate
Eleanore E. Hilow at the Cuyahoga County Juvenile
Court, 9300 Quincy Avenue, Cleveland, Ohio, on
Monday, February 22, 2016, commencing at 12:20 p.m.

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APPEARANCES:

Anne S. Magyaros, Esq.,
on behalf of Mother, Kathryn Van Kirk.
Kevin Cronin, Esq.,
on behalf of Father, Michael Moritz.

ALSO PRESENT:

Kathryn Van Kirk, Mother.
Michael Moritz, Father.

PROCEEDINGS

1
2 MAGISTRATE ELEANORE E. HILOW: Good
3 afternoon. We are here in the matter of Case
4 Number CU 08131418, Olivia Moritz.

5 There was filed a motion for a
6 restraining order, and that was filed by the
7 mother, Kathryn Murch, now known as Van Kirk.

8 Since that filing there have been
9 filings by the father. Father has also
10 requested a restraining order. We are here
11 today for purposes of those motions.

12 Prior to beginning, if we could please
13 have everybody identify themselves for the
14 record.

15 MS. VAN KIRK: Hi. Kathryn Van Kirk.

16 MS. MAGYAROS: Attorney Anne Magyaros.

17 MR. CRONIN: Attorney Kevin Cronin for
18 father.

19 MR. MORITZ: Michael J. Moritz, father
20 of Olivia Moritz.

21 THE COURT: It'll pick up your voice.
22 You can relax.

23 Okay. Since mother's restraining
24 order was filed first, and for the record, can
25 you just put the basis for mother's request on

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the record, Miss Magyaros?

MS. MAGYAROS: Yes. But just for some clarification on how we are proceeding, again, just prior to walking into the courtroom today was the first time that we were apprised that a motion for restraining order had been filed by the father and he had filed some significantly lengthy documents. That was only one of many motions that he filed, and briefs with this Court.

They were apparently sent out, according to counsel, but they were sent out to an old address where I have not practiced at for over seven years.

My client has not even read any of these motions yet, so I'm a little concerned about proceeding.

There's a lot of allegations in here that I would like to be able to address with my client. Whether we can take some sort of recess or -- I'm not sure what we're doing at this point.

THE COURT: I just want to get a basis of where we're going on this. I'm going to tell you right now I'm going to rule today. I have

1 to hear what you have to say.

2 MS. MAGYAROS: Okay.

3 THE COURT: And I will note that
4 mother's was filed on February 10th, and then
5 this hearing was set. Father's was filed on the
6 16th of February. So it has actually just wound
7 its way through the system.

8 It looks like it was sent to counsel
9 for mother on Bell Road, 1188 Bell Road, and
10 that is not your address?

11 MS. MAGYAROS: I am on Washington
12 Street, which should be the correct -- it was in
13 my pleading that was filed with the Court on the
14 10th.

15 THE COURT: And mother was not served
16 at all, Mr. Cronin?

17 MR. CRONIN: Father said he never
18 received a copy. You said earlier he did.

19 THE COURT: No, no. I'm asking you,
20 was mother served with a copy? I'm not saying
21 it was service that mother was sent a copy.

22 MR. CRONIN: Because I had gotten the
23 email from attorney Magyaros, I sent her
24 directly.

25 THE COURT: But you didn't serve mom?

1 MR. CRONIN: No, I did not.

2 THE COURT: Okay. And I will note
3 that in our pretrial discussion you had stated
4 that your client had not received his, but it
5 looks like personal service was perfected on
6 February 17th at 8:33 a.m. That's what the
7 Court record indicates.

8 MR. CRONIN: Apparently the record
9 says that something was left off at his house.
10 He denies receiving anything.

11 THE COURT: What's your client's
12 address?

13 MR. MORITZ: 27 Villa Beach,
14 Cleveland, Ohio 44110.

15 THE COURT: That's where it was left
16 at. It's in the system. It's in I-Case.

17 MR. CRONIN: The first one I saw was
18 the email from staff which was forwarded on to
19 father who said that he had not received
20 anything, and that was the one that was not time
21 stamped or signed by the affiant or notarized by
22 the attorney, or signed even by the attorney.

23 THE COURT: What was sent to the
24 father was time stamped because that's what's
25 delivered by our court.

1 MR. CRONIN: All I can tell you is
2 that --

3 THE COURT: Okay. I understand what
4 your client's saying, but that's what the
5 service is.

6 MR. CRONIN: Okay.

7 THE COURT: So just tell me the basis
8 of your client's restraining order request.

9 MS. MAGYAROS: Yes. Thank you, your
10 Honor.

11 The basis of the restraining order is
12 the parties have one minor child, Olivia, who's
13 9 years old, and she was born with a particular
14 medical condition that affects her ankle and her
15 leg, her left leg and her ankle.

16 There are two options to handle this
17 type of condition. One is amputation, and one
18 is surgical intervention that helps lengthen and
19 restructure the leg.

20 Through many, many, many months the
21 mother and father have been researching various
22 options for treatment, consulting with medical
23 practitioners, interviewing other people who
24 have participated in the process, done research,
25 et cetera.

1 There are only two facilities in the
2 United States that perform the surgical option
3 that would be available to Olivia. One is in
4 West Palm Beach, and one is in Baltimore.

5 The parties have visited both
6 locations. Miss Van Kirk I believe has been to
7 West Palm Beach on two -- consulted with the
8 surgeon twice in West Palm Beach in person.

9 MR. CRONIN: I'm sorry. What?

10 MS. MAGYAROS: I was confirming she
11 went down to West Palm Beach, and has through
12 her exhaustive efforts meeting with him, staff,
13 the facilities, Olivia has been down there, that
14 is far and away the option that Miss Van Kirk
15 believes without a doubt is in her daughter's
16 best interest.

17 And throughout this entire process and
18 the research and the visits Mr. Moritz has been
19 apprised and/or has participated in these visits
20 to the best of Ms. Van Kirk's knowledge.

21 He has all of the information that she
22 has. She's very comfortable with proceeding.
23 The surgery was scheduled mid-fall of last year,
24 probably about at least 90 days ago, and Mr.
25 Moritz was made aware at that time.

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And in January, the middle of January of this year, Mr. Moritz sent a letter to the Paley Institute in West Palm Beach stating that he does not consent to medical treatment of any kind by the Paley Institute or any of its affiliates with regard to Olivia, and he wanted that noted in the file.

As a result of that email that he sent two plus months after he knew it was scheduled for surgery, the Paley Institute has requested clarification that the mother is able to make the decision for the medical treatment for the child.

This Court, and by agreement of the parties, back in 2009 has designated the mom as the residential parent and legal custodian of Olivia. This is not a shared-parenting plan, and under Ohio law she does have the ability to make these medical decisions for her child.

She believes emphatically that this is the best option for the child. This is not some willy-nilly quick decision that she has made. She's consulted and turned over every stone that she is aware of in order to make this decision for Olivia.

1 The surgery is scheduled for March
2 17th of 2016 and that date was selected for --
3 the timing is important, with the extended
4 period of time that Olivia will be in West Palm
5 Beach for treatment, and there's some continual
6 extended treatment once she returns to
7 Cleveland.

8 The expected schedule for all of that
9 would have Olivia ready for school in the fall
10 of the 2016-2017 school year. So Miss Van Kirk
11 thought it was very important, this timing, and
12 selected the dates based on that.

13 It is my understanding if the surgery
14 does not happen on March 17th -- and I actually
15 just noted in my motion, it says March 17th,
16 1016. That is supposed to be 2016 -- that the
17 next time surgery could be had at the Paley
18 Institute if there was an available spot would
19 be in August, and that would certainly take her
20 out of a large, significant part of that school
21 year, which we would submit is not in her best
22 interest.

23 And again, Mr. Moritz filed some
24 documents today, the full extent of which we
25 have not been able to review and process.

1 But Miss Van Kirk is not going against
2 doctor's orders. This is a very careful, very
3 well-informed decision that she has.

4 Again, the information and process
5 that she used to get to that decision has been
6 shared with Mr. Moritz through this entire
7 process and we are requesting that the surgery
8 for March 17th, 2016 go forward and that Miss
9 Van Kirk be recognized with the decision-making
10 ability for Olivia that this Court awarded to
11 her back in 2009 and actually that Mr. Moritz
12 agreed that she would make those decisions back
13 in 2009. That was an agreed entry.

14 THE COURT: Mr. Cronin?

15 MR. CRONIN: We feel that mother
16 should not be rewarded for cooperating with the
17 Paley Institute in denying father the
18 information he's entitled to under Ohio Revised
19 Code.

20 These are responsibilities that Paley
21 owes the father regardless of what mother says
22 or does.

23 Counsel said that she has provided
24 information to father. I dispute that because
25 again, you know, he hasn't gotten timely

1 information about the hearings or schedules or
2 where meetings are. But again, Paley's
3 responsibility is independent of that.

4 If mother is entitled to the
5 information, father is entitled to the
6 information. It doesn't have anything to do
7 whether mother follows up with it or not.

8 If she is entitled to basic health
9 information, father is entitled to basic health
10 information, and if she declines to pursue it,
11 well, it's a good thing that father is deciding
12 that he is trying to pursue it, because that's
13 better for the best interest of the child to get
14 that information now.

15 Mother has been cooperating with the
16 Paley Institute in violating the Ohio Revised
17 Code right and left, as well as now it appears
18 rampant violations of the Florida Patient Bill
19 of Rights in terms of the information again
20 provided for the father, and as a result father
21 has zero confidence in the Paley Institute and
22 Dr. Paley.

23 There are options and alternatives
24 that are not being considered with a doctor in
25 Baltimore who co-developed these ideas with Dr.

1 Paley, but apparently now are on separate paths.

2 But Dr. Herzenberg at the Sinai
3 Institute certainly deserves as much
4 investigation as Dr. Paley has been getting from
5 mother, and we believe that that's important.

6 The doctors who have known Olivia the
7 longest have said that the family needs to come
8 together. That includes doctors at the
9 Cleveland Clinic who have been with her as
10 orthopedic surgeons now for six years, as well
11 as the University Hospital Pediatric Ethics
12 Office that has only recently been engaged
13 within the last several weeks.

14 They agree that the family needs to
15 come together on these sort of things and have
16 some discussions about these.

17 Now, not only is mother --

18 THE COURT: Can I stop you for a
19 second and ask you just this?

20 Can you address for me the agreement
21 that the parties entered into in 2009 as far as
22 medical decisions because I'm hearing a lot --

23 MR. CRONIN: Sure, sure, sure.

24 THE COURT: -- about the treatment
25 and --

1 MR. CRONIN: Right, right.

2 THE COURT: -- the institute, but what
3 I have jurisdiction over is that agreement.

4 MR. CRONIN: Right. Right. I
5 understand. I understand it was not a shared
6 parenting agreement, but that father is entitled
7 to information independent under Ohio law.

8 THE COURT: He's entitled to the
9 information under the agreement. I'm talking
10 about making medical --

11 MR. CRONIN: But I'm --

12 THE COURT: The agreement specifically
13 says that. He's entitled to the medical
14 information. It says that in the agreement.

15 MR. CRONIN: Right. And again, that's
16 being thwarted right and left on this by whether
17 Dr. Paley is not complying with the Florida
18 Patient Bill of Rights or the Ohio law that says
19 father gets whatever he wants.

20 The Ohio law doesn't say father gets
21 what mother requests. It says if mother has a
22 right to access the information, father has a
23 right to ask for that information.

24 He has an independent right to go
25 after that sort of stuff, so he's doing nothing

1 that he's not entitled to. He's asking for
2 information. He's asking for clarification.
3 He's asking to understand what's being posed for
4 Olivia, and why? Because as he said, those
5 doctors who have known Olivia the longest have
6 said, hold up.

7 Now, the other issue is, again, father
8 pursued mediation, and that's a preferred tool
9 that's used by Juvenile Court under Rule 9(A) of
10 Juvenile Court saying that some-sort-of
11 diversion is certainly appropriate for
12 addressing some of these sort of concerns.

13 Father for several months tried to
14 arrange for mediation, and on the eve of the
15 mediation meeting, mother cancelled and walked
16 out and we haven't been able to get back on that
17 page since.

18 The point is, there are perspectives
19 that should get raised for Olivia, and father
20 has a right to get the information in order to
21 help understand what sort of process is being
22 raised against his doctor, and to understand
23 that if some sort of procedure will ultimately
24 come back to the University Hospitals and Dr.
25 Liu to follow up on the Paley Institute, then

1 it's appropriate to engage the University
2 Hospitals Pediatric Ethics Office about what
3 sorts of things should be done, and they are
4 urging some sort of family discussion to try and
5 come together with some solutions and ideas that
6 make sense, and that's why we're here and we're
7 saying that a temporary restraining order -- or
8 the permanent restraining order on father is
9 misplaced.

10 _____ He's not interfering. He's gathering
11 information that he's entitled to do, and he's
12 entitled to raise these questions. And frankly,
13 mother should not be rewarded for him trying to
14 do so by saying he needs to be pushed further
15 aside.

16 He has a right to the information. He
17 has a right to engage mediation when he feels
18 aggrieved.

19 THE COURT: Do you want to respond?

20 MS. MAGYAROS: Well, all I keep
21 hearing is it's the information. If he has a
22 separate action for a facility about not getting
23 information and he thinks they violated the
24 Florida Code or the Ohio Code, that's a
25 completely separate issue from the fact that mom

1 was by agreement and by this Court's order
2 cloaked with the authority to make medical
3 decisions on behalf of this child.

4 THE COURT: That was the question I
5 was asking you to answer.

6 MR. CRONIN: I understand that.

7 THE COURT: But you haven't answered
8 it.

9 MR. CRONIN: Well, and the answer is
10 that father, one, has responsibilities to gather
11 information, and he's being thwarted.

12 Second, he has a right to have
13 mediation on an issue that's in dispute, and
14 that's being thwarted as well.

15 And the point would be, those who know
16 Olivia the longest are saying that we need to
17 take some time, and that ranges from the
18 Cleveland Clinic to the University Hospitals
19 Board of Pediatric Ethics, that we need to take
20 some time.

21 That's all that we're asking at this
22 point.

23 THE COURT: Is it true that the
24 surgery was scheduled in the fall?

25 MR. CRONIN: Not to father's

1 knowledge. That begins the deception and the
2 misinformation from the Paley Institute. Well,
3 it probably doesn't even begin the deception and
4 the misinformation, but certainly father did not
5 have understanding of that sort of process.

6 THE COURT: When did father travel to
7 Paley?

8 MR. CRONIN: Actually, he may have
9 heard first from daughter Olivia who told him --

10 (Inaudible).

11 THE COURT: Stop, stop.

12 MR. CRONIN: -- and that Olivia said
13 she wasn't supposed to tell.

14 (Inaudible).

15 THE COURT: You know better.

16 Was father notified of the surgery
17 being scheduled?

18 MS. MAGYAROS: Yes, he was. In his
19 affidavit he said November 22nd. The mom
20 believed it was the end of October, but I
21 just --

22 THE COURT: So by father 's own
23 affidavit he knew in November?

24 MS. MAGYAROS: November 22nd on his
25 affidavit.

1 THE COURT: So Mr. Cronin, he knew in
2 November.

3 Mr. Cronin --

4 MR. CRONIN: Yes. I'm sorry.

5 THE COURT: In the affidavit then your
6 client knew November 22nd, by his own affidavit.

7 MR. CRONIN: Okay.

8 THE COURT: Mom's claiming it was
9 sooner than that, but by his affidavit it's
10 November 22nd. Why wait--until--January?

11 MR. CRONIN: We started the process
12 almost immediately to gather information from
13 the Paley Institute and the Florida Board of
14 Health and I apologize if it took a month to be
15 able to get us to this month, but we were trying
16 to move --

17 THE COURT: You're talking three
18 months before you got here.

19 MR. CRONIN: Yeah.

20 THE COURT: And this child is
21 scheduled for surgery in a couple weeks.

22 MR. CRONIN: Well, we didn't -- yeah.
23 Well, we moved as quickly --

24 THE COURT: He knew.

25 MR. CRONIN: We moved as quickly as we

1 could to try, and when that surgery was
2 scheduled, we thought, yes, we need to make sure
3 that we're raising these issues well in advance
4 and we're a month before any of that sort of
5 procedure. And that's the best I've been able
6 to do. I'm sorry.

7 MS. MAGYAROS: And if I can state just
8 for the record, I did contact attorney Cronin
9 before we filed the motion trying to figure out
10 what was Mr. Moritz's intent by this letter.

11 Again, I didn't know if he just wanted
12 it in the file or he actually wanted to sort of
13 stop it.

14 So I talked to him before I filed the
15 motion, and then he did receive the copy of the
16 motion Kate had not signed yet because I met her
17 down here on the 10th. So I sent it to him
18 before I left my office when I came down here on
19 the 10th of February.

20 So he knew hours before he even came
21 into the court that I was coming in to do that.
22 And again, I'm handed his documents here while
23 I'm sitting in Court.

24 It just seems like an attempt to
25 interfere and delay so that the surgery does not

1 happen, and again, I'm not sure what legal
2 standing dad has at this point to interfere.

3 MR. CRONIN: I would love to clarify
4 that question. I mean, did you call -- was it
5 two days before filing?

6 THE COURT: Please, Mr. Cronin.
7 Please talk to me.

8 MR. CRONIN: Okay. Well, it's my --

9 THE COURT: Address your comments to
10 me.

11 MR. CRONIN: I'm sorry. It's my
12 understanding that the phone call that she said
13 that she made in advance of filing may have been
14 a day or maybe two days prior to filing, so
15 clearly it was well underway by the time she
16 asked me what was father's intention.

17 And I don't know. You know, we have
18 to look and try to understand, but yeah, they're
19 the ones here who are saying that father's
20 interfering and we're here on their motion and
21 responding to their motion to try to freeze
22 father out of any sort of participation in this
23 sort of thing.

24 THE COURT: But I'm trying to
25 understand, I get that you're saying the Paley

1 Institute hasn't been forthcoming with
2 information.

3 MR. CRONIN: Right.

4 THE COURT: But I guess we're not
5 getting to -- the issue before this Court right
6 now is I'm being asked to grant the restraining
7 order --

8 MR. CRONIN: Right.

9 THE COURT: -- for father to cease and
10 desist from interfering with the surgery because
11 by the agreement of the parties when they
12 entered into their custody and parenting
13 agreement, mother was granted the full authority
14 to make medical decisions, and I'm hearing that
15 dad doesn't like the Paley Institute's not
16 forthcoming with information --

17 MR. CRONIN: Sure.

18 THE COURT: -- and in our pretrial
19 conferences there's some question as to how the
20 surgery is going to be paid for, but I'm not
21 hearing a legal argument that would prohibit
22 this Court from granting mother's restraining
23 order and allowing the surgery to go forward.

24 MR. CRONIN: No. Thank you for that,
25 and let me be a little more blunt then and a

1 little more cognitive to that very question.

2 There are two points. One, father is
3 entitled to the information and mother should
4 not be rewarded for her complicity in sometimes
5 denying that information along with the Paley
6 Institute, in cooperation with the Paley
7 Institute, to deny father any information about
8 the scheduling or medical procedures and things
9 along those lines.

10 And then second, if there is an issue
11 in dispute, Ohio law acknowledges that he's
12 allowed to come for mediation and to mediate
13 those issues to try to come to a better
14 understanding, and that's what he's trying to
15 do, and mother walked out the day before the
16 mediation was scheduled. That's contrary to --

17 THE COURT: When was this mediation
18 scheduled?

19 MR. CRONIN: I believe it was
20 scheduled for December 1st.

21 THE COURT: Who was the mediator?

22 MR. CRONIN: The Cleveland Mediation
23 Center.

24 THE COURT: Not this Court Mediation?

25 MR. CRONIN: Not this Court.

1 THE COURT: I guess one, I'm not sure
2 what the reward is that you're saying that
3 mother should not be rewarded.

4 MR. CRONIN: Yes.

5 THE COURT: Are you saying the reward
6 being that the Court would allow the child to
7 have the surgery?

8 MR. CRONIN: No. That her independent
9 violations in failing to provide the information
10 to father and joining in Paley in not providing
11 information to father has kept him in the dark
12 in any ability to understand the steps and
13 procedures that are going to be involved, and
14 this is an enormous risk that's being posed to
15 the family as well as to Olivia who has several
16 times over suggested -- well, not suggested,
17 been very blunt that she thinks that the Paley
18 sort of approach is not the one that she would
19 favor.

20 MS. MAGYAROS: Who is she?

21 THE COURT: Speaking of Olivia.

22 MR. CRONIN: And again, she's a young
23 child. She's a young child. But even the
24 doctors at the Cleveland Clinic have asked, what
25 is Olivia saying about this whole thing? And

1 Olivia is being very clear and being --

2 MS. MAGYAROS: Your Honor --

3 MR. CRONIN: No. Olivia has said many
4 things, and we should understand those sort of
5 things as well.

6 THE COURT: She's 9 years old, though.
7 I mean, listen. Her comprehension is going to
8 be based on who she's having a conversation --

9 MR. CRONIN: Certainly.

10 THE COURT: No matter how bright she
11 is, she's 9.

12 MR. CRONIN: I understand. Certainly.

13 THE COURT: So I really don't want to
14 hear what Olivia at this point --

15 MR. CRONIN: Okay.

16 THE COURT: Because quite frankly, I
17 don't see her having the comprehension. I mean,
18 I don't know. She may not like flying. She may
19 not like -- I just think of a problem with
20 saying what Olivia.

21 Medical professionals, I can accept
22 that, but Olivia -- and I understand the
23 frustration that your client has is that he
24 thinks that Paley hasn't been forthcoming with
25 information.

1 It doesn't go to the heart of the
2 agreement that mother's asked me to issue a
3 restraining order to force the father to comply
4 with the agreement.

5 MR. CRONIN: Sure, sure.

6 THE COURT: That's my take on it.

7 MR. CRONIN: Sure.

8 THE COURT: I understand you're
9 agreeing with me, but there's restraining orders
10 like, don't let her have the surgery because I'm
11 not getting information, but that's basically
12 between him and Paley. They're not saying it's
13 not a problem, and you keep saying mother's
14 complicit. How is mother complicit in keeping
15 father's --

16 MR. CRONIN: Father hasn't gotten any
17 basic appointment information or any of the
18 procedure. Again, father is entitled to ask
19 under the Ohio Revised Code. Just because
20 mother ignores it and is willing to set it aside
21 or if mother is satisfied that Paley has met her
22 goal doesn't mean that she's met father's goal.

23 Father has an independent right to all
24 this information, and father's entitled to take
25 a disagreement under Ohio law into mediation to

1 say, let's go and work together to solve this,
2 and mother should not be walking out on those
3 opportunities.

4 So the mediation is also an issue of
5 very deep concern. But again, I don't want to
6 walk away from the fact that the information is
7 not being provided to be able to contribute in a
8 meaningful way.

9 Your Honor, the level of lies or
10 deception perhaps coming from the Paley
11 Institute and mother's acceptance of those sort
12 of things could rise to the level of medical
13 neglect, which would certainly be raising a
14 higher level of standard than mother needs to
15 be, and that father is legitimately raising, and
16 time would certainly be of the essence if you're
17 rushing to try and do a medical intervention in
18 March that may or may not be solved by school
19 year start.

20 If you were to start a medical
21 procedure in March and we were to get into
22 August and September and need more time, it
23 would be horribly wrong to try and meet the
24 arbitrary school start when to do so and remove
25 a brace might pose all sorts of risk of

1 infection and other sort of medical problems
2 that would make things far worse for Olivia.

3 Those need to be solved before we
4 start embarking on a medical procedure that is
5 experimental, that is still listed as an
6 experimental procedure, an elective procedure
7 according to any sort of insurance application.

8 THE COURT: Okay. Let me understand
9 this first. This surgery was scheduled in
10 September or October? When was it scheduled?

11 MR. CRONIN: The middle of October.

12 THE COURT: Middle of October. So it
13 was scheduled five months in advance, about five
14 months in advance. And the initial meeting that
15 your client went to was in the spring of 2015 at
16 Paley Institute.

17 MR. CRONIN: Yes.

18 THE COURT: And that's when mother
19 went there?

20 MR. CRONIN: But only understood about
21 the surgery option being in late November.

22 THE COURT: Okay. But as early as
23 spring of 2015 Paley Institute has been
24 identified by mother as the potential for
25 surgery?

1 MR. CRONIN: Sure.

2 THE COURT: When was the trip to
3 Baltimore that they took? You said they took a
4 trip to Baltimore.

5 MR. CRONIN: Mid summer.

6 MS. VAN KIRK: June.

7 THE COURT: Of 2015?

8 MS. VAN KIRK: 2015.

9 THE COURT: Okay. And what is the
10 role that University Hospitals is going to play
11 in this child's recovery?

12 MR. CRONIN: University Hospitals --

13 THE COURT: Go ahead.

14 MS. VAN KIRK: University Hospital has
15 an orthopedic surgeon there by the name of Dr.
16 Raymond Liu. He has done fellowships with Dr.
17 Paley in his Institute numerous times. He was
18 actually just there in February because he's
19 very interested in learning more about limb
20 lengthening and things like this.

21 So Dr. Liu would be the primary care
22 physician locally, and Dr. Liu pointed out to us
23 that that is a real gift.

24 A lot of these children that go with
25 the reconstruction go back to their homes and

1 there are doctors that don't know how to really
2 deal with the exterior fixator that would be on
3 her leg for six months.

4 Also at UH, Mr. Moritz put in an
5 ethical complaint with UH and Ann Kessler
6 handled that, and she spoke with Dr. Liu as
7 well. So they are both UH employees.

8 I spoke with Miss Kessler on Friday
9 and she said this is not an ethical issue.

10 There is nothing ethically wrong with what is
11 going on here. This is a legal matter. Those
12 were the words she said with me.

13 She did not advise any counseling.
14 She did not advise any mediation between talking
15 with Dr. Liu and herself, speak with Mr. Moritz
16 and myself. She said this is not an ethical
17 thing and we are not going any further with this
18 ethically.

19 That's what Mrs. Kessler told me.

20 MR. CRONIN: If I may. That flies in
21 the face of the discussions that father has had
22 with UH, and I would remind also that UH would
23 be responsible for surgical procedures on behalf
24 of the Paley Institute here in terms of the
25 follow-up care, some of the lengthening that's

1 going to be required, and the recuperation and
2 the removal of the brace, which is, frankly, a
3 very dangerous medical/surgical intervention and
4 risks infection at numerous different levels,
5 which would make this whole outcome far worse
6 than we're facing right now.

7 THE COURT: Most surgical procedures
8 have a risk of infection.

9 MR. CRONIN: That's certainly true.
10 That's certainly true, and we're avoiding them
11 in the discussion that we're facing here now.

12 But the UH office will be involved in
13 a surgical procedure that is expected of a UH
14 doctor, and so Dr. Liu will be doing some
15 surgical operations on Olivia, and we as a
16 result will be invoking, are invoking the UH
17 Pediatric Ethics Board.

18 Now, if she said something to mother,
19 I don't know that. All I'm going by is the
20 discussions --

21 THE COURT: I thought you told me that
22 the Ethics Board was already involved.

23 MR. CRONIN: They were, but father did
24 his inquiry and was told that they were agreeing
25 that there should be some family discussion and

1 group counseling and an opportunity for
2 everybody to come together on a perspective.

3 THE COURT: But not at UH, not to do
4 ethics --

5 MR. CRONIN: No, no.

6 THE COURT: Were they telling you to
7 do it outside?

8 MR. CRONIN: At the UH -- oh, I'm
9 sorry. I'm referring now to the UH Pediatric
10 Ethics Board that was only recently involved in
11 this whole issue by father.

12 THE COURT: And you're saying they
13 told you they're not getting involved and
14 they're not going to schedule counseling or
15 mediation?

16 MS. VAN KIRK: That's correct. And
17 she did inform me as of Friday of last week.
18 And Miss Kessler told me that the father was
19 making all these other requests, that he wanted
20 a board of people together, and he could present
21 certain things, and she said there's absolutely
22 no reason to do this.

23 I've spoke with Dr. Liu. I've spoke
24 to other medical professionals at UH. We're not
25 going to be doing that. This is a legal issue.

1 There's nothing medically unethical going on
2 here.

3 MR. MORITZ: I would like the
4 opportunity to respond to that, please.

5 THE COURT: Talk to your lawyer.

6 MR. CRONIN: The point I want to make
7 very clear is that UH is involved surgically.
8 They are --

9 THE COURT: Well, that's what she
10 said.

11 MR. CRONIN: There are
12 medical/surgical procedures that will be done by
13 Dr. Liu.

14 MS. VAN KIRK: That is not 100
15 percent.

16 THE COURT: Stop, stop, stop.

17 MR. CRONIN: So it's not as simple as,
18 you know, Dr. Liu will be looking at the Paley
19 work or evaluating or understanding or just
20 monitoring.

21 He's going to be actively involved in
22 this procedure here in Cleveland for 10 to 12
23 weeks, at least according to one description
24 from Paley. And that he will be involved in
25 what might be one of the most risky moments is

1 the removal of any sort of thing that risks all
2 these infection issues.

3 Now, father has requested that he be
4 able to supplement some of the comments, and
5 with your leave I'd request that he be allowed
6 to.

7 THE COURT: As long as you don't have
8 a problem with that, I don't have a problem with
9 it. Go ahead.

10 MR. MORITZ: Thank you. I'm here for
11 Olivia. I'm not here for myself. I am here to
12 protect her from the risks posed by the Paley
13 Institute in their egregious lies which they
14 have placed on paper with Dr. Paley's signature.

15 I have the documents with me. Kate is
16 aware of these lies, which have been refuted,
17 and this is a big thing for me to say a doctor
18 lies, and that's why we're in this court today
19 in my view.

20 Those two statements that Dr. Paley
21 made in regards to Olivia being normal,
22 completely normal and functional in her foot and
23 her ankle have been refuted by four other
24 doctors on four other separate occasions as not
25 the case, not true of an expected outcome for

1 this surgery.

2 Dr. Paley is just simply over-stating,
3 over-selling, and I am completely offended by
4 what has gone on at the Paley Institute, which
5 is in my affidavit.

6 And I want it to be made clear that
7 that is what I'm asking of the Court here is to
8 halt this surgery from proceeding forward so
9 that this can be evaluated by the parents in a
10 civil discussion, which I have been not-allowed
11 by mom for the last about four or five months,
12 possibly longer, since August 31st actually. It
13 was when we were supposed to complete our
14 investigation on our own.

15 There is another doctor who is equally
16 skilled. The surgery was developed at his
17 institution with Dr. Paley, who is now in
18 Florida, and what I'm suggesting is that -- this
19 is the Baltimore Institute, Sinai Hospital,
20 Ruman Institute.

21 What I'm suggesting is that the Paley
22 Institute should not be performing the surgery
23 based on what has been stated in my affidavit,
24 and also including the fact that I will not be
25 able to be present in Olivia's care during this

1 extremely risky procedure, which will enter this
2 family in a long-term relationship for many
3 years, as many as ten years with the Paley
4 Institute knowing full well that they have
5 violated apparently five of her rights in the
6 State of Florida apparently, and will be
7 investigated by the Florida Department of
8 Health.

9 This is why I'm saying no Paley and
10 all her lies. No Paley for Olivia.

11 THE COURT: Okay.

12 MR. MORITZ: And that's what I find is
13 the basis for which their restraining order
14 should not be granted and that ours should.

15 THE COURT: Okay. I don't have an
16 affidavit attached to this.

17 MR. CRONIN: I'm sorry?

18 THE COURT: I don't have an affidavit
19 from father. When was that --

20 MR. CRONIN: Probably in the back of
21 the brief.

22 THE COURT: All I have is the motion
23 for restraining order.

24 MR. CRONIN: And it was time stamped
25 upon filing.

1 THE COURT: I don't have it. It's not
2 in I-Case yet.

3 MR. CRONIN: Okay. I'm sorry.

4 THE COURT: And it usually takes about
5 seven days.

6 MR. CRONIN: I can give you a copy
7 now.

8 THE COURT: Do you want to respond?

9 MS. VAN KIRK: I do.

10 THE COURT: Do you want her to
11 respond?

12 MS. MAGYAROS: Sure.

13 THE COURT: Go ahead.

14 MS. VAN KIRK: There is no proof at
15 all that Dr. Paley lied. He did not lie to me.
16 I was at the first consult. I went back again
17 in October to review the physical therapy, to
18 talk with many of his staff members, many of the
19 families that were there. I have never been
20 lied to by Dr. Paley or any of his staff.

21 MR. MORITZ: A missing fibula.

22 THE COURT: Come on.

23 MS. VAN KIRK: They keep kind of
24 saying Dr. Paley egregiously lied or keeps
25 throwing that around, and it is not proven that

1 Dr. Paley lied anywhere except in father's mind.

2 MR. MORITZ: A missing fibula is not
3 normal.

4 THE COURT: Stop. Stop. You know
5 what? We're not going to do this.

6 MR. MORITZ: Okay. I'm sorry.

7 THE COURT: We have not gotten past,
8 Mr. Cronin, I feel like I'm being a bit
9 redundant here. The agreement of the parties
10 made mother the residential parent and legal
11 custodian and conferred upon her the authority
12 to make medical decisions.

13 MR. CRONIN: Right.

14 THE COURT: The restraining order I
15 have is alleging that father is not being given
16 the information he wants. His complaint is with
17 Paley. Father has a complaint with Paley.
18 Paley's not following Florida's Patient Bill of
19 Rights, but there's nothing to show that the
20 agreement does not give mom the authority to
21 consent to this treatment, and I must say that
22 it does sound like it's been a process, and to
23 wait until less than a month before the child's
24 surgery or just over a month before the child's
25 surgery to suddenly say, no, I want to put the

1 brakes on, does not seem appropriate.

2 I'm hearing doctors say this, doctors
3 say that. What doctor?

4 MR. CRONIN: Okay. Her name --

5 MR. MORITZ: Would you like to know?

6 THE COURT: Yes.

7 MR. CRONIN: If I can share the
8 time-stamped copy of the brief that was provided
9 to mother and was mailed on the 17th, according
10 to the Court records --

11 MS. MAGYAROS: To the wrong address,
12 according to the Court records.

13 MR. CRONIN: Well, okay.

14 THE COURT: Well, you wouldn't have
15 service. It's gonna come back. You're not
16 going to have service on it. It's gonna come
17 back if she's not there. It just hasn't come
18 back yet.

19 MR. CRONIN: It's the same zip code.
20 I mean, she moved to a different neighborhood in
21 Chagrin Falls.

22 THE COURT: It's gonna come back,
23 though. When it goes to that address, it's not
24 going to go. It's gonna come back.

25 MR. CRONIN: I don't know that, but

1 okay.

2 THE COURT: You've been on this Court
3 long enough.

4 MR. CRONIN: Okay. Your Honor, again,
5 the affidavit filed with the Court described
6 what doctors have said, and all of the doctors
7 that are closest and involved in Olivia say that
8 the entire family needs to be able to come
9 together on this or it's not going to work for
10 Olivia, and those include the doctors who have
11 known Olivia the longest, including Dr. Bala and
12 Dr. Herzenberg, who gave a range of discussions,
13 not just the selling points of their institute,
14 but a range of discussions, and he did so at no
15 cost to make sure that the parents had the best
16 information available to them.

17 By contrast, as well as Dr. Liu prior
18 to him getting involved and being involved in
19 the Paley Institute. And then we bring back to
20 the most recent discussion, because there is
21 gonna be a surgical intervention at UH with Dr.
22 Liu following up on the care that would be
23 expected of Olivia, we invoke the Ethics Panel
24 at UH, and she may not be aware of the surgical
25 steps that are going to be required by UH which

1 says that she told mother they may not be
2 involved, but I don't know.

3 All I know is what they've told the
4 father, and that is that based on his
5 description that there is a role for some family
6 discussion on these sort of things.

7 Now, if you'd like, I can approach and
8 give you a copy of the brief that included the
9 time-stamped affidavit.

10 THE COURT: Okay.

11 MS. MAGYAROS: Who's the affidavit by?

12 MS. VAN KIRK: Michael.

13 MS. MAGYAROS: Oh, this is father's
14 affidavit?

15 THE COURT: Yes.

16 MS. MAGYAROS: And again, for the
17 record, my client hasn't seen it. It's riddled
18 with hearsay and inappropriate statements, and
19 again not even addressing the issue at hand.

20 THE COURT: Do you object to me
21 reading it, because there's no service. You
22 don't have service on mother. Do you object to
23 me reading the affidavit?

24 MS. VAN KIRK: Yeah, I have an
25 objection. Object.

1 MR. CRONIN: I went with the address I
2 had on record, and I understood that mother had
3 retained her and I sent her copies of everything
4 I had. And I was absolutely appropriate to do
5 so.

6 Now --

7 THE COURT: I want to understand,
8 though. You sent it to what you thought was the
9 right address. What I'm saying is though you
10 don't have service. If it goes to the wrong
11 address, you don't have service. You don't have
12 service on mother because it wasn't sent to
13 mother, and you don't have service on her
14 attorney --

15 MR. CRONIN: But mother had already
16 retained an attorney, and I would have been out
17 of bounds if I had sent some documentation
18 directly to mother at that point because at that
19 point --

20 THE COURT: I know. I'm just saying
21 you don't have service. All I'm saying is I'm
22 asking if mother objects to me reading this
23 affidavit.

24 MS. MAGYAROS: I just want to say, I
25 gave him a courtesy email because that's how the

1 world usually works this day and age service, of
2 my motion, all my current information.

3 He had my motion that I had just
4 filed, so there's no excuse that he waited for
5 snail mail and put it in some antiquated address
6 that he had that is so old.

7 So I gave him the courtesy before I
8 even came down here to file ours, and I just
9 wanted that noted for the record.

10 THE COURT: So you gave him this is
11 what you emailed, your motion for mother's
12 restraining order?

13 MS. MAGYAROS: I emailed it to him,
14 but the client hadn't even signed it yet because
15 she --

16 THE COURT: But that's what you
17 emailed him?

18 MS. MAGYAROS: Yes, before I filed it
19 with the Court.

20 THE COURT: Her address is right on
21 the front of it.

22 MR. CRONIN: Huh?

23 THE COURT: Her address is right on
24 it.

25 MR. CRONIN: I don't have an answer

1 for you on that. As I said, I went on my
2 understanding of her address.

3 THE COURT: Do you object to me
4 reading the affidavit?

5 MS. MAGYAROS: Are we proceeding on
6 this motion? At some point --

7 THE COURT: I'm going to give it back
8 to you. You don't have service. I mean, it's a
9 valid argument. You didn't send it to the right
10 address. You had the right address. I can't
11 look at it. It's a valid agreement that there's
12 no service on the motion for a restraining
13 order.

14 MS. MAGYAROS: Can I?

15 THE COURT: Go ahead.

16 MS. MAGYAROS: He was talking that,
17 you know, we need some time for family
18 discussion.

19 These parties almost two years ago
20 were in West Palm Beach. That wasn't the
21 beginning of the discussion. The discussion
22 predated their trip to West Palm Beach. They in
23 June as a family went to Baltimore.

24 Mr. Moritz referenced something that
25 they were supposed to have their investigations

1 complete by August apparently so they could
2 caucus again and figure out what was going on.

3 Kate went to West Palm Beach again in
4 October, invited Mr. Moritz to accompany her as
5 well.

6 This isn't that there has not been
7 family discussion. There's been significant
8 family discussion, significant exchange of
9 information.

10 He's talking about mediation. He
11 could have filed his motion a long time ago.
12 There's no time for mediation. Surgery is
13 scheduled for March 17th of 2016.

14 Again, he sat on his hands all of this
15 time and just muddied the waters enough at the
16 Paley Institute that they don't want to proceed
17 with the surgery until this clarification that
18 mom has the ability to sign on it. So he's just
19 kind of muddied it, and then went about his day.

20 And we're asking that this surgery
21 proceed on March 17th.

22 Again, we've been sitting here
23 listening to a whole lot of things, but it
24 hasn't been addressed yet the fact that mom has
25 the decision-making ability with regard to

1 Olivia, and he is interfering with that.

2 We're asking that he be restrained
3 from doing that.

4 MR. CRONIN: May I respond?

5 THE COURT: You may.

6 MR. CRONIN: Okay. Father is doing
7 nothing that any father is not entitled to
8 whether you are looking at the Ohio Revised
9 Code, the Florida Bill of Rights, or Rule 9(A)
10 of Juvenile law that says that he's allowed to
11 try and understand, and also invoke an issue
12 with mediation, and that's where we're at.

13 He has been thwarted in any of the
14 information requests either by Paley or mother
15 working with Paley.

16 The idea that mother has been keeping
17 father advised or apprised of what's going on is
18 inaccurate in light of the fact that, you know,
19 frankly, she hangs up on father whenever they
20 have these sort of discussions.

21 And so no, the information has not
22 been complete coming from mother, and even worse
23 from the Paley Institute.

24 Father is entitled to the information
25 in order to try and help participate in that and

1 to raise these legitimate issues that would be
2 presented in a mediation sort of setting, but he
3 has been thwarted in trying to exercise the
4 right to information under Florida Patient Bill
5 of Rights or under the Ohio Revised Code.

6 And just because mother is not raising
7 these questions or not sharing the information
8 with father doesn't mean father can't be raising
9 these issues as well on his own and bringing
10 them to the Court's attention in a recognized
11 mediation setting, and that's what the other
12 doctors have been urging, and that's what
13 father's been trying to do.

14 THE COURT: For the record, I don't
15 see any request for mediation with this court
16 with regards to this agreement.

17 I have not heard anything to challenge
18 mother's authority to make medical decisions.
19 Both parties were represented by counsel when
20 this agreement was entered into.

21 I believe, Mr. Cronin, you represented
22 the father at the time of this parenting
23 agreement. Mother had the same counsel as well.
24 Mother was named the residential parent and
25 legal custodian for this child. Father was

1 given the right to have access to the medical
2 records, but it did not reserve for him the
3 right to object to medical decisions.

4 I'm not sure what the thought process
5 was you all entered into that agreement. I
6 wasn't the Magistrate. I wasn't here at that
7 time, but that's what you all came up with.

8 I can understand father's frustration
9 with the Paley Institute. If he wishes to
10 pursue a complaint with Florida, that is fine,
11 but that does not negate the agreement that the
12 parties entered into, and that's the hurdle you
13 haven't gotten over.

14 MR. CRONIN: Okay. Well --

15 THE COURT: Mom has that authority,
16 and all the parties agreed to that. So as to
17 mother's request to restrain father from
18 basically violating the agreement he entered
19 into which gave her the right to make medical
20 decisions, I'm going to grant that restraining
21 order.

22 I am also going to say that father
23 does have the right to have access to the
24 medical records. He does not have the right to
25 inhibit or stop the medical procedure, but

1 that's what he agreed to some six years ago.
2 And you cannot wait until a procedure is
3 scheduled, and by all of your accounts, this
4 whole process of investigation started a year
5 ago in March.

6 So for one year you've all been
7 investigating. The surgery is scheduled. If
8 father had a problem, he had ample time, if he
9 wanted to, to file something with this Court,
10 but to just send a letter to the Institute
11 saying I object and I want it -- like I'm
12 putting you on notice, that's inappropriate.

13 So for that reason I'm going to grant
14 mother's restraining order in that mother does
15 have the right to make the medical decisions
16 because that's what you all agreed to.

17 Whatever issues you have with Paley
18 Institute, I wish you luck with that, but that's
19 not something this Court considers.

20 MR. CRONIN: If I may, I want to
21 reserve any sort of right of filing objections
22 to that decision.

23 THE COURT: You have an absolute right
24 to object to this to Judge Thomas F. O'Malley.

25 MR. CRONIN: That's right. And also I

1 would point out in addition -- well, while we
2 have not addressed the mediation right that
3 father has to be able to pursue under 9(A) and
4 that the child's condition has changed, and at
5 the same time we also filed a motion to change
6 the shared parenting agreement because the
7 child's position has changed and worsened and
8 will continue to worsen and risks grave
9 worsening further as a result of the, frankly,
10 improvident decisions that mother's making and
11 choosing to make on her own under the guidance
12 and misinformation of the Paley Institute.

13 THE COURT: File a motion to amend.
14 You may object. I'm a Magistrate. I'm not a
15 Judge.

16 MR. CRONIN: I understand.

17 THE COURT: You have a right to object
18 to this decision to the Judge. I can only rule
19 on what's before me today.

20 MR. CRONIN: Right.

21 THE COURT: What is before me today is
22 the restraining order, and I've not been given
23 any ground not to grant that restraining order.

24 We are adjourned.

25 MS. MAGYAROS: Thank you, your Honor.

C E R T I F I C A T E

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7 I, James M. Mizanin, a stenographic
8 reporter, do hereby certify that I wrote the
9 foregoing audio-recorded proceedings in their
10 entirety in Stenotype, which was subsequently
11 transcribed into typewriting by means of
12 computer-aided transcription under my direction; and
13 that the foregoing Transcript of Proceedings is a
14 true and correct transcript.

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16 Signed this 3rd day of March, 2016.

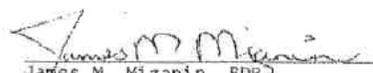
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