FILED

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

NOV 0 4 2008

Clerk, U.S. District and Bankruptcy Courts

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IN RE:

M.B.

Case: 1:08-cv-01898

Assigned To: Kennedy, Henry H

Assign. Date: 11/4/2008

Description: Civil Rights - Non. Employ.

NOTICE OF REMOVAL

TO THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

FROM THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§1441, 1446, the real defendants in interest, Eluzer Brody and Miriam Brody as the parents of Motl Brody (a minor), by their undersigned attorney, hereby remove this action to the United States District Court for the District of Columbia, on the grounds that:

- 1. On information and belief, on or about

 November 3, 2008, Children's National Medical Center (commonly known as "Children's Hospital") commenced an action in the Superior Court of the District of Columbia, Family Court
 Domestic Relations Branch, styled "In Re: M.B.", Jacket Number 08FSP310 ("the Action").
- 2. The complaint in the Action asks the Superior Court, inter alia, to permit the Medical Center to "stop all treatment" of Motl Brody, the 12-year-old son of Eluzer and Miriam Brody who is a patient in the Intensive Care Unit of the Medical Center.

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- 3. The summons and complaint in the Action were served upon counsel for Eluzer and Miriam Brody on November 3, 2008.
- 4. The real parties in interest in the Action are Children's National Medical Center as plaintiff, and Eluzer Brody, Miriam Brody and Motl Brody as defendants.
- 5. The Action is a civil action of which the district courts of the United States have original jurisdiction, pursuant to 28 U.S.C. §1332, because (a) the matter in controversy exceeds the sum or value of \$75,000; (b) on information and belief, the Medical Center is incorporated, and has its principal place of business, in the District of Columbia, and thus is a citizen of the District of Columbia; and (c) Eluzer Brody, Miriam Brody and Motl Brody are all citizens of the State of New York.
- 6. No defendant is a citizen of the District of Columbia.

7. A copy of all process, pleadings and orders served upon Eluzer and Miriam Brody is attached hereto, to wit: "Summons" and "Complaint (for Injunctive Relief and Declaratory Judgment)."

Dated: November 4, 2008

Yours, etc.,

dettrey/I. Zuckerman D.C. Bar No. 369120

Curtis, Mallet-Prevost,

Colt & Mosle LLP

1200 New Hampshire Avenue, N.W.

Suite 430

Washington, D.C. 20036

jzuckerman@curtis.com

(202) 452-7350

Attorney for Eluzer Brody, Miriam Brody and Motl Brody

TO: CLERK

United States District Court for the District of Columbia 333 Constitution Avenue, Room 1225 Washington, D.C. 20001

KENNETH H. ROSENAU, ESQUIRE Rosenau & Rosenau 1304 Rhode Island Avenue, N.W. Washington, D.C. 20005

Attorney for Children's National Medical Center

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA TRIBUNAL SUPERIOR DEL DISTRITO DE COLUMBIA FAMILY COURT - DOMESTIC RELATIONS BRANCH JUZGADO DE FAMILIA- DIVISIÓN DE RELACIONES DOMÉSTICAS 500 Indiana Avenue, N.W., Washington, D.C. 20001

A Complaint for: Demanda de:	Divorce Divorcio	Legal Separation Separación Legal	Annulment Anulación	Other: Otro
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	Plaintiff Demandante		et Number ero del expediente	FSP310_
	vs.			
	Defendant Demandado	CUMMONG		
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PLAINTIFF'S ATTORNE ABOGADO DEL DEMANI				
Mama	K. H. Rosena	Address: Dirección:	· 电 /	C. 2005
Witness, the Hor Doy fe, el Honore	norable Chief Judge of the Su able Juez Presidente del Tribu	perior Court of the District of Columb nal Superior del Distrito de Columbia y	ola and seal of said Court. el sello de dicho tribunal.	
SEAL Sello	,	of ti	rk of the Superior Court he District of Columbia wario del Tribunal Superior del D	signo de Colymbia
Date of Issue: Fecha de emisio	ón: <u>[1]3](</u>) By: Por:	Diputy Clerk	4 3 4 3
(See back) * <i>Este citatorio se</i> Please note that i	e vence 60 días después de la fe	of issue noted above. This case will be echa de emisión. Esta causa será sobres lable on the reverse side of this form. to de este formulario.		comply with Rule 4 (I).

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA FAMILY DIVISION

IN RE:)	200 to 1-3 © 0:36
M.B.))	08 FSP 310
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<u>COMPLAINT</u> (FOR INJUNCTIVE RELIEF AND DECLARATORY JUDGMENT)

COMES NOW, Children's National Medical Center, commonly known as Children's Hospital, (hereinafter "Hospital") and moves by and through the undersigned counsel as follows:

- The Court has jurisdiction pursuant to D.C. Code § 11-921(a) and D.C. Rules of Civil Procedure (RCP) 57 permits a declaratory judgment.
- 2. Patient M.B. has been a patient at Children's National Medical Center for approximately six months. He recently succumbed to a brain cancer.
- 3. M.B. was regrettably evaluated as brain dead on November 02, 2008 at 4:55 p.m.

 The parents were informed of the result and were informed that the Hospital would perform another examination within twelve hours to confirm the brain death. The Hospital would also do another confirmatory test such as an EEG or cerebral radionuclide study. If these tests confirmed the first results then brain death would be confirmed under D.C. guidelines.
- 4. Brain death is the medical and legal standard for death in the District of Columbia.

- 5. The parents requested that the Hospital would defer the next test, however, the Hospital stated that they would proceed with all tests. The Hospital explained what would happen if the Parents did not agree with the results of the confirming tests and reported that the Parents demonstrated an understanding of these procedures. (See Apnea and Brain Death Evaluation results attached as Exhibit A).
- 6. That the parents' attorney, Mr. Biser, contacted the hospital and stated that they were opposed to further brain testing, and he also stated that that if the Hospital pursued the tests then Judge Collyer of the Federal Court would request an appearance before her prior to the test. In the meantime the Judge requested, as a courtesy, that the Hospital maintain the ventilator and refrain from performing any further tests.
- 7. However, there has been no order issued by Judge Collyer, as of 12:30 PM on November 3, 2008.
- 8. That the parents are of the Orthodox Jewish faith and as part of their faith they believe that life ends when the heart stops beating as opposed to when the brain stops working. Further, Judge Collyer indicated at 9:30 AM, on November 3, 2008, that she was not exercising jurisdiction.
- 9. The issue in this case is whether the Hospital has the authority to follow the stated procedure when a patient is considered brain dead, or whether the parents wishes take precedent over hospital procedure in this case.
- 10. At this stage the parents are refusing to make any decisions regarding their child, except actions the Hospital does not wish to take.

- 11. A guardian ad litem should be appointed to make a decision regarding further tests for the child.
- 12. The following people have been contacted as possible Guardian Ad Litems regarding M.B.: Ira Zimmerman, George Teitlebaum, and Ethan Suskine.
- 13. We are seeking relief of the Court as an alternative to harsher, less tolerable rights of self-help we could invoke.
- 14. Nevertheless, the Parents' reaction seems outside the normal "grief reaction" regrettably seen all too often at a specialty hospital such as Children's. Unlike conventional hospitals we see far more fact patterns of this type.

WHEREFORE, Children's National Medical Center seeks:

- a. That the court issue a declaratory judgment stating that the Hospital is permitted to take the required tests to confirm that M.B. is brain dead and stop all treatment.
- b. Any further relief as this Court deems just and equitable and balances the best interests of the patient, and duties of all parties.

Respectfully submitted

Kenneth Rosenau, #342733

Rosenau & Rosenau

1304 Rhode Island Ave., NW Washington, DC, 20005

Washington, DC 20005

202-387-8680

202-387-8682 FAX

CERTIFICATE OF SERVICE

I, KENNETH H. ROSENAU, hereby certify that a copy of the foregoing Complaint for Injunctive Relief and Declaratory Judgment were served by hand by the same process server. This service was effectuated by hand on day of November to:

Mr. and Mrs. Brody c/o Mr. Jeffrey Ira Zuckerman Curtis Mallet-Prevost Colt & Mosle LLP

1200 New Hampshire Avenue NW

Suite 430

Washington DC 20036-6808

Kenneth H. Rosenau

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Notice of Removal to the United States District Court for the District of Columbia from the Superior Court of the District of Columbia" was served upon counsel for the Children's National Medical Center by hand delivery to:

Kenneth H. Rosenau, Esquire Rosenau & Rosenau 1304 Rhode Island Avenue, N.W. Washington, D.C. 20005

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