

Court of Common Pleas of Philadelphia County  
Orphans' Court Division

**Cover Sheet**

FOR COURT USE ONLY	
ASSIGNED TO JUDGE	JOHN W. HERRON
CONTROL NO.	181866
Responding parties must include this number on all filing	

NAME OF ESTATE JAYDEN AUYEUNG, A MINOR	ORPHANS' COURT NUMBER 201800681MI E-Filing Number: 1805039799
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TYPE OF ESTATE			
<input type="checkbox"/> Decedent's Estate	<input type="checkbox"/> Trust Inter Vivos	<input type="checkbox"/> Testamentary Trust	<input type="checkbox"/> Incapacitated Person <input checked="" type="checkbox"/> Minor
<input type="checkbox"/> Principal (power of attorney) <input type="checkbox"/> Non-Profit Corporation <input type="checkbox"/> Other (specify) _____			

FILING PARTY'S RELATIONSHIP TO ESTATE MOTHER
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PLEADING OR DOCUMENT FILED PRELIMINARY INJUNCTION
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NAME OF FILING PARTY (NOT COUNSEL FOR THE PARTY) ANNA AUYEUNG	ADDRESS 27 UTICA ROAD EDISON, NJ 08820
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<b>ATTORNEYS MUST CHECK ONE BOX</b>	
TO THE CLERK OF ORPHANS' COURT:	
<input checked="" type="checkbox"/> Kindly enter my appearance on behalf of	<input type="checkbox"/> I have entered my appearance on behalf of
JAYDEN AUYEUNG , ANNA AUYEUNG	

NAME OF FILING ATTORNEY OR PARTY ERIK B. JENSEN	ADDRESS 1500 WALNUT STREET SUITE 1920 PHILADELPHIA PA 19102
PHONE NUMBER (215) 546-4700	FAX NUMBER (215) 546-7440

SUPREME COURT IDENTIFICATION NO. 40330	E-MAIL ADDRESS erik@jensenbagnatolaw.com
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SIGNATURE OF FILING ATTORNEY OR PARTY ERIK JENSEN	DATE SUBMITTED Wednesday, May 16, 2018, 03:57 pm
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OTHER PARTIES (Additional parties will be listed on next page if necessary)
<p><b>FILED</b></p> <p>Date <u>05/16/18</u></p> <p><b>ORPHANS' COURT FEE PAID</b></p> <p>\$ <u>90.25</u></p> <p>Per <u>Christine Bate</u></p>

Is notice required? <input checked="" type="radio"/> No Yes. Copy of notice attached to pleading. Date of Notice: _____ Yes. All joinders are attached.	If Citation is requested: 1. Was Citation against Respondent previously issued? Yes <input checked="" type="radio"/> No 2. If yes, date of service: _____	Has another petition been decided in this case? Yes <input checked="" type="radio"/> No Is another petition pending? Yes <input checked="" type="radio"/> No If yes, identify the Judge: _____
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IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY,  
PENNSYLVANIA ORPHANS' COURT DIVISION

No. O.C. of  
ESTATE OF JAYDEN AUYEUNG, A Minor

In Re: :  
Jayden Auyeung, A Minor :

**PRELIMINARY DECREE**

AND NOW, this \_\_\_\_\_ day of May, 2018, upon consideration of the Petition for Citation by Anna Auyeung ("Petitioner"), PNG of Jayden Auyeung, a Minor, it is hereby ORDERED and DECREED that a Citation is awarded, directed at CHOP ("Respondent"), to show cause why Respondent should not be enjoined from removing Jayden Auyeung from life support.

A copy of the Citation and Preliminary Injunction shall be served on Respondent at least twenty (20) days before the date when a responsive pleading is due in the same manner as Original Process may be served in a civil action under the applicable Rule(s) of Civil Procedure.

A copy of this Preliminary Decree shall be served with the Citation. Pursuant to 20 Pa.C.S. § 766 and Pa. O.C. Rule 3.5(a)(7), proof of service of the Citation shall be formally filed on or before the date when a responsive pleading is due with the Clerk of the Orphans' Court, Room 415 City Hall, Philadelphia, Pennsylvania 19107.

The Citation is returnable in \_\_\_\_\_ days.

BY THE COURT:

\_\_\_\_\_  
J.

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY,  
PENNSYLVANIA ORPHANS' COURT DIVISION

No. O.C. of

ESTATE OF JAYDEN AUYEUNG, A Minor

In Re:

Jayden Auyeung, A Minor

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**DECREE**

AND NOW, this 16<sup>th</sup> day of May 2018, upon consideration of Petitioner's Preliminary Injunction and having determined that:

1. Petitioner has shown a reasonable likelihood of prevailing on the merits of its claim;
2. Petitioner will suffer immediate and irreparable harm and loss if Respondent is permitted to proceed with or cause the termination of life support measures for Petitioner's minor son;
3. The public interest favors protecting the right of parents to decide whether to continue life support for their children;
4. Petitioner does not have an adequate remedy at law; and,
5. Greater injury will be inflicted upon Petitioner by the denial of temporary injunctive relief than would be inflicted upon Respondent by the granting of such relief.

IT IS HEREBY ORDERED THAT: Petitioner's Injunction seeking an ex parte Order for a temporary restraining order restraining Respondent CHILDREN'S HOSPITAL OF PHILADELPHIA; and Dr. Jane Doe and other unidentified respondents herein designated as John Doe Jane Doe and Does 1-10, from ending Life Support for the Petitioner's minor son Jayden Auyeung, born May 16, 2008 and requesting for provision of

life support and nutrition and other medical treatment while the Court makes its ruling, it is hereby ORDERED and DECREED that the Respondent shall place and/or leave in place proper respiratory support and nutrition so that the Petitioner's minor child can meet the conditions required for transfer to another facility.

BY THE COURT:

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J.



termination of Petitioners' son's life support, while this Honorable Court considers whether to enter an injunction and while Plaintiffs continues to seek treatment for their son at another facility.

Unless the TRO and/or injunctive relief is granted, Respondent would be at liberty to proceed with its already-stated intention to terminate Petitioners' son's life support, which would cause the death of Petitioner's son and immediate and irreparable damage to the Petitioners.

5. Respondent's conduct is actionable and Petitioners' right is clear.
6. Petitioner has a reasonable likelihood of success on the merits of their claims.
7. Petitioner has no adequate remedy at law.

WHEREFORE, Petitioners respectfully request that this Honorable Court enter an immediate Temporary Restraining Order prohibiting Defendants from terminating life support for Petitioners' minor son Jayden Auyeung, and enter a Rule upon Respondent to show cause why an injunction should not issue.

Respectfully submitted,

/s/ Christopher F. Bagnato  
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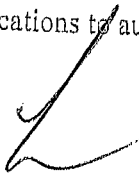
DATE: May 16, 2018

COMMONWEALTH OF PENNSYLVANIA:

COUNTY OF PHILADELPHIA :

VERIFICATION

I, ANNA AUYEUNG, Plaintiff /Defendant, does hereby verify that the facts and statements made in the foregoing Pleadings are true and correct to the best of my knowledge, information, and belief, and understands that false statements are made subject to the penalties of 18 Pa C.S. Section 4904, relating to unsworn falsifications to authorities.

  
ANNA AUYEUNG





Approximately one week after admission to CHOP, Petitioners' consent to terminate life support was requested. Respondents repeatedly sought Petitioners' consent to terminate life support ever since then. Despite the Respondents' contentions, Petitioners have experienced physical responses from their son when his hand is touched and have also seen movement in his feet, indicating that he is not "brain dead." Also, although with assistance, his heart has continued to beat. But Respondents have persisted in seeking the Petitioners' consent to terminate life support and it appeared to Petitioners that the Respondents' entire focus was directed toward attempting to confirm so-called "brain death." Finally, on Tuesday May 15, 2018, the day before Jayden's tenth birthday, in a meeting called and attended by Defendant's agents, servants, workmen or employees ("A/S/W/E"), referred to herein as Dr. Jane Doe and other A/S/W/E's of Respondent referred to as John and Jane Does 1-10, including members of an "ethics group", Petitioners were told that a neurological test would be performed on their son on Thursday May 17, 2018, and that if the results of this test confirmed their contention that the minor child is "brain dead", that the Respondent would remove the Petitioners' son from life support without the Petitioners' consent.

Petitioners are actively seeking alternative placement for their child and need additional time. AS of filing, Petitioners have 2 hospitals willing to accept Jayden. Jayden is in need of a tracheotomy which CHOP asserts it cannot legally perform. Despite Respondents' dire position, numerous examples can be found of persons being diagnosed as "brain dead" and then recovering and regaining consciousness after far longer periods than the than the period that has elapsed since Jayden's life support began. Such recovery is particularly more likely in the case of young children around Jayden's age.

#### **IV. Legal Argument:**

Pennsylvania Rule of Civil Procedure Number 1531 sets forth the procedure for obtaining preliminary or special injunction. A petition for preliminary injunction is ordinarily made at the commencement of the action and asks the court to grant, temporarily and before trial, all or a portion of the same relief which the movant seeks in his motion as final relief after trial.

A special injunction is relief which is separate from and auxiliary or collateral to the main relief requested in the motion and may be requested at any stage of the action *Overland Enterprise, Inc. v. Gladstone Partners, L.P.*, 950 A.2d 1015 (Pa. Super. 2008). The purpose of preliminary or special injunctive relief is to preserve the status quo which existed before the acts complained of by restoring the last peaceable, uncontested status which preceded the controversy, and to prevent the occurrence of irreparable harm before the determination of the merits of the case at trial. *Id.* Preliminary or special injunctive relief usually restrains or prohibits action, but may take the form of a mandatory injunction under appropriate circumstances.

Irreparable harm means harm that is not entirely ascertainable and compensable by money damages. Obviously, losses caused to a parent by the death of a minor child constitute irreparable harm *Id.*

#### **Standard-for Granting Preliminary Injunction**

The standards for granting preliminary injunction were described by the Superior Court in *Overland Enterprises, Inc. v. Gladstone, Partners, LP*, 2008 PA Super 114, 950 A.2d 1015, 1019 (Pa. Super.2008), as follows:

- (1) a party seeking a preliminary injunction must show that an injunction is necessary to prevent immediate and irreparable harm that cannot be

adequately compensated by damages.

- (2) that party must show that greater injury would result from refusing an injunction than granting it; and concomitantly, that issuance of an injunction will not substantially harm other interested parties in the proceedings.
- (3) the party must show that a preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct.
- (4) the party seeking an injunction must show that the activity it seeks through the restrain is actionable that its right to the relief is clear and that the wrong is manifest or in other words must show that it is likely to prevail on the merits.
- (5) the party must show that the injunction it seeks is reasonably suited to abate the offending activity.
- (6) the party seeking an injunction must show that a preliminary injunction would not adversely affect the public interest.

Each of these elements are present in the instant matter and compel that injunctive relief be entered in favor of the Petitioners. Without the requested temporary restraining order ("TRO"), Respondent will terminate life support and the Petitioners' son will die. This clearly would be irreparable harm that would be greater than any harm that could come from granting the TRO. The Respondent would suffer no harm and would merely be restrained from terminating life support.

For the issuance of a preliminary or special injunction, it is not necessary that the Petitioners establish an absolute right to relief on the underlying claims or that the court determine the merits of the controversy at the preliminary stage. *Id.* Where the above factors are

present, the petitioner's right to preliminary relief is sufficiently "clear" if the petitioner has raised substantial legal questions going to the merits which are so serious as to make them a fair ground for litigation and further investigation and consideration *Id.* The standard is the same for whether the injunctive relief is prohibitory or mandatory in nature, provided that the injunction does not alter the status quo as it existed before the complained-of act.

The court may act on the basis of the averments of the pleadings or petition, the affidavits of the parties or third persons, and any other proof which the court may require, in deciding whether or not to grant a preliminary or special injunction. Because the purpose of a preliminary injunction is limited to preserving the relative positions of the parties until a trial on the merits can be held, and given the haste that is often necessary if those positions are to be preserved, a preliminary injunction is customarily granted on procedures that are less formal and on evidence that is less complete than in a trial on the merits. *Southco, Inc. v. Kanebridge Corp.*, 324 F.3d 190 (3rd Cir. Pa. 2003).

In the matter at bar, the Respondent hospital has asserted its intention to take the life-ending action of removing the Petitioners' son from life-support without the consent of the Petitioners. The Respondent makes this assertion after nearly a week of seeking the Petitioners' consent, but now appear to claim that it is authorized to take this action without the Petitioners' consent. In the case of *In re Estate & Pers. of Border*, 68 A.3d 946 (Pa. Super. 2013), a hospital which considered a patient "brain dead," wanted to terminate life support against the wishes of the guardian. Because the guardian's consent was necessary, the hospital had to file a motion in Orphans Court to get that guardian replaced with one who would approve the termination. The Orphans Court granted the hospital's motion, removed the non-consenting guardian, and arranged for the appointment of a guardian who would consent to terminating the patient's life support. After this occurred the patient died, but not before the non-consenting guardian filed an

emergency petition attempting to enjoin the hospital from terminating life-support. It was not until after the patient died that the non-consenting guardian's emergency motion was denied as moot (because the patient was already dead). The non-consenting guardian then appealed her removal as guardian to the Superior Court. In explaining why it considered the non-consenting guardian's appeal even though the issue was moot as to this particular patient, the Superior Court said:

"Generally, an actual claim or controversy must be present at all stages of the judicial process for the case to be actionable or reviewable. *Plowman v. Plowman*, 409 Pa. Super. 143, 597 A.2d 701, 705 (Pa. Super. 1991). If events occur to eliminate the claim or controversy at any stage in the process, the case becomes moot. *Id.* Even if a claim becomes moot, we may still reach its merits if the issues raised in the case are capable of repetition, yet likely to continually evade appellate review. *Id.* See also *In re Fiori*, 543 Pa. 592, 673 A.2d 905, 909 n. 4 (Pa. 1996) *Commonwealth v. Bernhardt*, 359 Pa. Super. 413, 519 A.2d 417, 420 (Pa. Super. 1986) (holding exception to mootness doctrine exists where "(1) the question involved is capable of repetition but likely to evade review, or (2) the question involved is one of public importance"). Therefore, if the issues raised by an appeal are "substantial questions" or "questions of public importance," and are capable of repetition, yet likely to evade appellate review, then we will reach the merits of the appeal despite its technical mootness. *Id.*

*In re Duran*, 2001 PA Super 52, 769 A.2d 497, 502 (Pa. Super. 2001) (parallel citations omitted).

Here, [the patient's] death soon after the orphans' court issued the March 12, 2012 order renders the issues raised in this appeal technically moot. Appellant's issues on appeal, however, are of great public importance, are capable of repetition, and are likely to evade appellate review. See e.g. *In re Fiori*, 673 A.2d at 909 n.4 (holding death of patient did not preclude appellate review where issue was of important public interest, capable of repetition, yet apt to elude appellate review). Accordingly, we proceed with the merits of this appeal."

Ultimately, the Superior Court in *Border* ruled in favor of the non-consenting guardian, finding that the hospital's quest to terminate life support should have ended with the refusal of the non-consenting guardian to give consent. This case illustrates very clearly that the Defendant in the instant case is not at liberty to remove life support from the Petitioners' son, as they have asserted they plan to do tomorrow, the day after his tenth birthday.

Accordingly, Petitioners seek, in the effort to protect their son from death, the immediate issuance of a Temporary Restraining Order.

**V. Conclusion:**

The Temporary Restraining Order should be granted for the reasons as set forth in the foregoing Petition and Memorandum.

WHEREFORE, the Petitioners respectfully requests that this Honorable Court immediately enter an Order precluding and prohibiting the Defendant from terminating life support for Petitioners' son.

Respectfully submitted,

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DATE: May 16, 2018

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY,  
PENNSYLVANIA ORPHANS' COURT DIVISION

No. O.C. of

ESTATE OF JAYDEN AUYEUNG, A Minor

In Re: :  
: :  
Jayden Auyeung, A Minor :  
:

**CERTIFICATE OF SERVICE**

The undersigned Petitioner hereby certifies that the foregoing Preliminary Injunction was served upon all necessary persons in the manner, at the address, and on the date stated below:

**Service by the court's ECF filing system and/or hand delivery addressed as follows:**

Children's Hospital of Philadelphia  
Rasheen Davis Merritt  
Assistant General Counsel  
3615 Civic Center Blvd  
Philadelphia PA 19104

Lawrence G. McMichael, Esquire  
Dillworht Paxson LLP  
1500 Market Street, Suite 3500E  
Philadelphia, PA 19102

Respectfully submitted,

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erik@jensenbagnatolaw.com

DATE: May 16, 2018