

Indigent

IN THE CHANCERY COURT FOR KNOX COUNTY
AT KNOXVILLE, TENNESSEE

2009 NOV 23 AM 9:18

CATHERINE PALMER, for herself and
on behalf of her minor child,
Gabriel Palmer

EDWARD G. HOGAN

Plaintiff,

Civil Action No. 176535-2

v.

EAST TENNESSEE CHILDREN'S
HOSPITAL ASSOCIATION, INC., a
Tennessee not-for-profit corporation; DR.
KEVIN BRINKMANN; DR. JOSEPH
CHILDS; DR. MATTHEW HILL; DR.
YVONNE BREMMER; DR. ILSE J.
ANDERSEN; DR. STERLING W.
SIMPSON; NURSE LAUREN ***;
SOCIAL WORKER KATHY FOWLER;
JOHN and JANE DOES 1-9, members of
the East Tennessee Children's Hospital
Association Ethics Panel in charge of care
for Baby G;

Defendants.

VERIFIED COMPLAINT AND PETITION FOR
RESTRAINING ORDER AND INJUNCTION

Comes Plaintiff CATHERINE PALMER, and for her Verified Complaint and Petition for
the Entry of an Order restraining and/or enjoining the Defendants would show unto this
Honorable Court as follows:

I. INTRODUCTION

1. This is an emergency request for a temporary restraining order and injunction needed to save the life of Gabriel Palmer, a nine-month-old boy whose medical care will be terminated because of his disabilities and over the objection of his legal and natural mother, plaintiff Catherine Palmer, by Defendants East Tennessee Children's Hospital ("ETCH") in Knoxville, Tennessee, and Gabriel Palmer's individual doctors. ETCH, the named doctor defendants, and John and Jane Doe defendants who are members of ETCH's "ethics panel" have stated that they will ratify their illegal withdrawal of medical care decision on Monday, November 23, 2009 at noon.

2. Tennessee Code §§ 68-11-1801 through 1815 specify that Baby G's mother has the right to decide medical care for her infant son, that ETCH and Baby G's care providers may not terminate Baby G's care over his mother's objection, that Ms. Palmer may seek injunctive relief which is urgently needed to prevent ETCH's illegal cessation of Baby G's care, and that Ms. Palmer is entitled to damages and reasonable attorneys fees.

II. PARTIES AND JURISDICTION

3. This Court has jurisdiction under Tennessee Code §§ 68-11-1811 and 1815 for Ms. Palmer's request for injunctive relief, damages, and attorney's fees for ETCH's violation of her right to decide her baby son's medical care. Defendants, as well as all the actions giving rise to this case, are located in Knox County.

4. Plaintiff Catherine Palmer is a resident of 9007 Hoitt, Sweetwater, Tennessee. 37874. She is Gabriel Palmer's mother and his surrogate decision maker pursuant to Tennessee Code § 68-11-1806(c)(3). Ms. Palmer appears in this case for herself and on behalf of Gabriel Palmer.

5. Defendant East Tennessee Children's Hospital Association, Inc. is a not-for-profit hospital that is organized under the laws of Tennessee and whose principal place of business is located at 2018 Clinch Avenue, Knoxville, TN 37901. On information and belief, Defendant can be served at said address.

6. Defendant Dr. Kevin Brinkmann, is the director of the Pediatric Intensive Care Unit at ETCH, is a health care provider of Baby G, and upon information and belief will be on any ETCH ethics panel convened to withdraw Gabriel Plamer's medical care. On information and belief, Defendant can be served at ETCH.

7. Defendant Dr. Joseph Childs is a health care provider of Baby G at ETCH, and upon information and belief may be on any ETCH ethics panel convened to withdraw Gabriel Plamer's medical care. On information and belief, Defendant can be served at ETCH.

8. Defendant Dr. Matthew Hill is a health care provider of Baby G at ETCH, and upon information and belief may be on any ETCH ethics panel convened to withdraw Gabriel Plamer's medical care. On information and belief, Defendant can be served at ETCH.

9. Defendant Dr. Yvonne Bremmer is a health care provider of Gabriel Plamer's at ETCH, and upon information and belief may be on any ETCH ethics panel convened to withdraw Gabriel Plamer's medical care. On information and belief, Defendant can be served at ETCH.

10. Defendant Dr. Ilse J. Andersen is a health care provider of Baby G at ETCH, and upon information and belief may be on any ETCH ethics panel convened to withdraw Gabriel Plamer's medical care. On information and belief, Defendant can be served at ETCH.

11. Defendant Dr. Sterling W. Simpson is a health care provider of Baby G at ETCH, and upon information and belief may be on any ETCH ethics panel convened to withdraw Baby G's medical care. On information and belief, Defendant can be served at ETCH.

12. Defendant Social Worker Kathy Fowler is assigned to Baby G's case at ETCH, and upon information and belief may be on any ETCH ethics panel convened to withdraw Baby G's medical care. On information and belief, Defendant can be served at ETCH.

13. Defendants John and Jane Does 1-9 are other medical providers and assigned persons to Baby G's case and upon information and belief may be on any ETCH ethics panel convened to withdraw Gabriel Plamer's medical care.

III. ALLEGATIONS

14. Baby G was born to Ms. Palmer in January 2009. He was born prematurely, and he was diagnosed with Chromosome 10 Ring Syndrome, a genetic abnormality. He also had a clubfoot and a narrow airway.

15. Ms. Palmer is a single mother of Gabriel Plamer, who is her only child. She has no income because she has been caring full time for Baby G during this year, which has involved significant medical treatment and hospitalizations. She brings this restraining order request based on a pauper's oath, attached.

16. After a few months in the University of Tennessee hospital, Baby G went home to live with his mother, who in turn lives with her mother, Baby G's grandmother, Jean Palmer.

17. Catherine Palmer is Gabriel Plamer's surrogate decision maker under Tennessee Code § 68-11-1811.

18. At home, Baby G flourished. He grew, and played, received physical therapy, and went to his regular doctor visits. He was fed through a gastric feeding tube and received some oxygen and medications.

19. One night in early October, Baby G was having trouble breathing. Because it was the weekend, Ms. Palmer was not able to contact any of Gabriel Plamer's doctors, so she took Gabriel Plamer to ETCH's emergency room.

20. ETCH had trouble dealing with Baby G and apparently was not comfortable treating children with his disabilities. They had difficulty finding one of his veins, and when they drilled into his bone Baby G went into shock.

21. As a result, Baby G was put on a respirator and he developed pulmonary vascular disease. Gabriel Plamer was taken to Vanderbilt Hospital for treatment at the end of October, but was sent back to ETCH in early November.

22. Gabriel Plamer's condition is stable. He is not dying, and he could live for many years.

23. Gabriel Plamer is on a respirator, a pulse oximeter, various medications, and he receives milk through his G tube.

24. This feeding and treatment of Gabriel Plamer are medically indicated for his condition.

25. Despite these treatments, when Gabriel Plamer is not sedated he is alert, active, and responsive. As recently as Wednesday November 18, Gabriel Plamer was awake, was actively kicking his feet, tried to play with his stuffed animals, saw and listened to his mother and grandmother, and responded to his favorite music.

26. At Vanderbilt Gabriel Plamer was awake and alert in this fashion for significant periods of time because he was not sedated nearly as much as he is at ETCH. ETCH fears that if Gabriel Plamer is not sedated most of the time he may pull out his respirator tube, but Vanderbilt did not consider that a danger necessitating Gabriel Plamer's sedation.

27. After Gabriel Plamer's return from Vanderbilt, ETCH began to give up on his care. On November 13, Defendant Dr. Kevin Brinkmann, head of the ICU at ETCH, told Ms. Palmer that ETCH was going to cease Baby G's respirator, medications, pulse oximeter and milk feeding because they considered his care futile. He said that a committee of doctors that includes the named physician Defendants would meet soon to make the formal decision of withdrawal of treatment, but that the decision was a foregone conclusion. He said that treatment would cease 72 hours after the formal decision meeting. He said that ETCH would cease this treatment despite Ms. Palmer's request that Gabriel Plamer continue to be treated.

28. After Dr. Brickman's decision that Gabriel Plamer was not worth treating, ETCH started discriminating against Gabriel Plamer and denying him basic care. For example, ETCH stopped bathing Baby G, and stopped administering cream to alleviate his chapped skin. ETCH has ceased Gabriel Plamer's physical therapy, and has reduced his diaper changes, elevating his risk for diaper rash and potential sepsis.

29. ETCH has also interfered with Ms. Palmer's attempts to have Gabriel Plamer transferred to other institutions that are more competent in dealing with Gabriel Plamer's condition.

30. On information and belief, ETCH's decisions not to care for Gabriel Plamer have been on the basis of Gabriel Plamer's various disabilities.

31. The formal decision meeting is scheduled for Monday, November 23, 2009 at noon, and the committee members have already said that they will decide to cease Gabriel Plamer's care despite his mother's directions to the contrary.

32. On Friday, November 20, 2009, counsel for Plaintiff sent a letter to ETCH and to Dr. Brinkmann as head of the PICU, advising them of the illegality of withdrawal of care for Baby G over Ms. Palmer's objection and asking them to verify to counsel by the end of the day that Baby G's care would not be discontinued.

33. As Baby G's natural and legal mother, Ms. Palmer is Baby G's surrogate decision-maker and she wants Gabriel Plamer's treatment to continue, but ETCH has decided and will quickly formalize its decision to cease Gabriel Plamer's treatment despite her directions to the contrary.

34. If an injunction is not immediately issued to stop ETCH from ceasing Gabriel Plamer's treatment in violation of Tennessee law, and to require ETCH to assist rather than obstruct Baby G's transfer, Gabriel Plamer will die and Ms. Palmer will suffer immense and irreparable harm.

IV. COUNT ONE: INJUNCTIVE RELIEF, DAMAGES, AND ATTORNEYS FEES UNDER TENNESSEE CODE § 68-11-1811 AND 1815

35. Ms. Palmer incorporates herein the allegations in the paragraphs above.

36. Under Tennessee Code § 68-11-1806, Catherine Palmer is Gabriel Plamer's surrogate decision maker by virtue of being his single mother and caretaker.

37. Under Tennessee Code § 68-11-1808, ETCH and the individually named doctor Defendants have a duty to follow Ms. Palmer's directives to continue Gabriel Plamer's care and not cease his respirator, medications, and pulse oximeter, and to continue his basic care like milk through his G tube, bathing, and cream for his skin.

38. Defendants have engaged in credible and imminent threats to violate the law by withdrawi Gabriel Plamer's medical care, thereby causing serious bodily injury and death. Defendants have also already harmed Gabriel Plamer by failing to adequately bathe, lotion, and change diapers for Gabriel Plamer due to their imminent futility decision.

39. Defendants are violating Tennessee Code § 68-11-1808 by determining that they will cease Gabriel Plamer's care over Ms. Palmer's objections, and by sabotaging her efforts to have Baby G transferred to another institution for care.

40. By their actions, Defendants are causing Ms. Palmer and Gabriel Plamer damage and irreparable harm that necessitate immediate injunctive relief.

41. A restraining order and/or injunction is necessary to prevent Defendants from withdrawing Gabriel Plamer's care on Monday, November 23, 2009 and thereafter.

42. Under Tennessee Code § 68-11-1815, Ms. Palmer is entitled to an immediate injunction requiring Defendants to continue Gabriel Plamer's care and to assist in Ms. Palmer's attempts to find a transferee institution.

43. Defendants' actions as described above have caused suffering to Baby G, have caused actual damages and emotional harm to Ms. Palmer, and necessitated this legal action.

44. Under Tennessee Code § 68-11-1811, Ms. Palmer is entitled to actual damages, from ETCH and each doctor Defendant, and an amount no less than \$2500, as well as reasonable attorneys fees.

V. PRAYER FOR RELIEF


WHEREFORE, based upon the foregoing, Ms. Palmer prays for the following:

- A. That process issue and be served upon Defendants requiring them to answer this Complaint within the time and manner prescribed by law.

- B. That the Court issue a restraining order that restrains and enjoins Defendants from withdrawing Gabriel Plamer's care without Ms. Palmer's approval, including Gabriel Plamer's respirator, pulse oximeter, medications and tube feeding, from continuing to refuse basic care to Gabriel Plamer such as bathing, lotion, and regular diaper changes, and from failing to assist efforts to transfer Gabriel Plamer to an appropriate institution.
- C. That because of Ms. Palmer's indigency due to her full-time care for Gabriel Plamer as a single mother, the Court waive the bond amount pursuant to Tenn. R. Civ. P. 65.05(1).
- D. That within fifteen (15) days from issuance of the restraining order, a hearing be held and, thereafter, the Court issue a temporary injunction that restrains and enjoins Defendant as set forth above while this case is pending.
- E. That upon the rendering of a final decision in this case, the Court order the temporary restraining order be made and become a permanent injunction.
- F. That the Court award Ms. Palmer and Gabriel Plamer damages, reasonable attorneys' fees and costs of suit.
- G. That the Court order such other and further relief as this Court deems equitable and just.

THIS IS THE FIRST APPLICATION FOR EXTRAORDINARY RELIEF IN THIS CAUSE.

Respectfully submitted,



John O. Threadgill, BPR No. 1102
Threadgill Law Firm, PC
Box 10606

Knoxville Tennessee 37939
Phone: (865) 693-1550
Fax: (865) 693-3632
Thread_j@bellsouth.net

Steven H. Aden,* Va. Bar #: ***
Matthew S. Bowman,* Mich. Bar #: P66239
ALLIANCE DEFENSE FUND
801 G Street NW
Washington, DC 20001
Phone: (202) 393-8690
Fax: (202) 347-3622
saden@telladf.org
mbowman@telladf.org

Attorneys for Plaintiff

**Pro hac vice motion forthcoming*

VERIFICATION

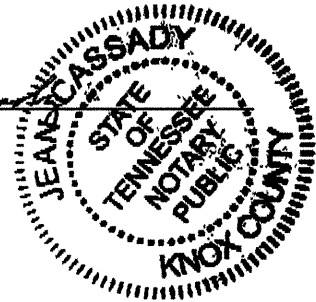
STATE OF TENNESSEE)
COUNTY OF KNOX)

Catherine Palmer, being first duly sworn, upon oath deposes and says that she has read the foregoing Complaint and knows the contents thereof, that the same is true of her own knowledge, except as to such matters as are therein stated upon information and belief, and as to those matters she believes them to be true.

Catherine Palmer
CATHERINE PALMER

Subscribed and sworn to before me this 23rd day of November, 2009.


Jean Cassidy
Notary Public



My Commission Expires:
9/06/11

COST BOND

We acknowledge ourselves as sureties for the costs incidental to the filing of the Complaint in this matter.

By: 

Attorney