

FILED

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

MAY 20 2016

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

JONEE FONSECA, an individual parent  
and guardian of I.S., a minor,

Plaintiff - Appellant,

v.

KAISER PERMANENTE MEDICAL  
CENTER ROSEVILLE; et al.,

Defendants - Appellees.

No. 16-15883

D.C. No. 2:16-cv-00889-KJM-  
EFB

Eastern District of California,  
Sacramento

ORDER

Before: REINHARDT, BERZON, and MURGUIA, Circuit Judges.

The dissolution of the district court's temporary restraining order is stayed temporarily in order to provide this court sufficient time to review the motion papers and decide the emergency motion for an injunction pending appeal.

The court has received appellees' responses to the May 17, 2016 emergency motion for an injunction pending appeal, and appellant's reply in support of the emergency motion.

Appellant shall file a supplement to her motion papers addressing item **(1)** below, and at her option also addressing item **(2)**, by no later than 5:00 p.m. Pacific Daylight Time on May 23, 2016. Appellees may file a supplemental response by

no later than 5:00 p.m. Pacific Daylight Time on May 25, 2016, but shall notify the court if they decide not to do so.

(1) Appellant's amended complaint alleged that the California Uniform Determination of Death Act (CUDDA) is unconstitutional and violates due process. The district court order at issue in this preliminary injunction appeal found that, as to the claims regarding constitutionality of CUDDA, there was no state action by Kaiser Permanente Medical Center Roseville ("Kaiser") or Dr. Myette support a claim under 42 U.S.C. § 1983. The district court went on to examine the CUDDA claims as against defendant Dr. Smith in her official capacity of the Director of the California Department of Public Health, and found that CUDDA is unlikely to be found substantively unconstitutional on its face, and that it is unlikely to be found that full procedural due process is unavailable with respect to CUDDA.

Appellant's May 17, 2016 emergency motion addresses the question of whether there is "state action" as to Kaiser and Dr. Myette, but it does not adequately address the district court's findings regarding the merits of the CUDDA due process claim. Appellant's supplemental filing shall include her argument as to the merits of the claim that CUDDA violates substantive and/or procedural due process.

(2) Appellant's supplemental filing may also provide a status update, supported by an affidavit or declaration, as to the current status of appellant's efforts to find an alternative location to which Israel can be transferred, if appellant believes that any developments since the time of the district court hearing are relevant to the issue before this court.