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IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE GUARDIANSHIP  
OVER THE PERSON AND ESTATE OF,  
  
ADEN HAILU,  
  
An Adult Ward.  
  
\_\_\_\_\_  
FANUEL GEBREYES,  
  
Appellant,  
  
vs.  
  
PRIME HEALTHCARE SERVICES, LLC dba  
ST. MARY'S REGIONAL MEDICAL  
CENTER,  
  
Respondent.

Electronically Filed  
No. 68531 Aug 04 2015 03:20 p.m.  
Tracie K. Lindeman  
District Court Clerk of Supreme Court  
Case No. 15-00125

**CONDITIONAL NON-OPPOSITION TO  
APPELLANT'S EMERGENCY MOTION FOR STAY PENDING APPEAL**

Respondent, Prime Healthcare Services, LLC dba St. Mary's Regional Medical Center ("St. Mary's"), by and through its attorneys of record, Snell & Wilmer LLP, hereby files its conditional non-opposition to Appellant's emergency motion for stay pending appeal. St. Mary's does not oppose Appellant's Emergency Motion for Stay so long as: (1) the stay is for a very limited time, and; (2) the parties are able to obtain an expedited briefing schedule because this matter -- Aden Hailu's hospitalization and determination of death -- has been ongoing since April 2015. Although St. Mary's does not oppose a limited stay of the district court's order, St. Mary's does however dispute Appellant's position that St. Mary's will not suffer irreparable harm and that Appellant is likely to prevail on the merits of the appeal.

**I. Factual Background**

Appellant seeks review of the district court's Order denying Appellant's ex parte motion for restraining order and emergency petition for order authorizing medical care and permanent

1 injunction which demanded St. Mary’s to continue to perform medical procedures for Aden Hailu  
2 (“Hailu”) that St. Mary’s and its physicians objected to performing on the grounds that Hailu is  
3 legally dead as determined under the Uniform Determination of Death Act NRS 451.007 et seq.  
4 The district court agreed with St. Mary’s and ordered that St. Mary’s was not restrained from  
5 terminating, withholding or withdrawing life support systems for Hailu.

6 On April 1, 2015 Aden Hailu experienced abdominal pain and went to the emergency  
7 room at St. Mary’s. She underwent surgery and was admitted to the hospital. Following the  
8 surgery, Aden Hailu was placed on a ventilator.

9 On or about April 17, 2015, St. Mary’s and its physicians determined Aden Hailu met the  
10 definition of death per the Uniform Determination of Death Act (NRS 451.007) based on the  
11 accepted medical standards outlined by the American Academy of Neurology and therefore  
12 determined Hailu should be removed from the ventilator.

13 Appellant refused to allow discontinuation of support services and sought court  
14 intervention. The matter was originally filed as a new action (CV15-01172) by Appellant’s  
15 former counsel in Department 4 of the district court, Judge Connie Steinheimer, on June 18, 2015,  
16 seeking an Emergency Motion for Temporary Restraining Order to compel St. Mary’s to continue  
17 to maintain life support services for Hailu until such time as Appellant could obtain an  
18 independent medical evaluation of Hailu to confirm the determination of death by St. Mary’s.

19 A hearing was held on that motion on June 18, 2015. At the conclusion of the hearing, the  
20 Parties stipulated that St. Mary’s would continue to maintain life sustaining measures until July 2,  
21 2015 during which time Appellant had to retain an independent medical expert to confirm or  
22 disaffirm that Hailu met the conditions and criteria for death under the Uniform Determination of  
23 Death Act, NRS 451.007, after which any further request for continuing maintenance of life  
24 sustaining measures would be determined by Department 12 of the district court.

25 The matter then came before Department 12 on Appellant’s new Ex Parte Motion for  
26 Temporary Restraining Order and Emergency Petition for Order Authorizing Medical Care,  
27 Restraining Order and Permanent Injunction filed on July 1, 2015. Respondent filed an  
28 Opposition on July 2, 2015. On July 2, 2015 Department 12 held a hearing and took evidence

1 and testimony. Based on the circumstances at the July 2, 2015 hearing, the Court and Parties  
2 entered a Stipulation and Order on July 20, 2015 and continued the hearing to July 23, 2015  
3 where Department 12 took further evidence and testimony and argument from the Parties.

4 Department 12 issued its ruling from the bench denying Appellant's ex parte motion and  
5 petition for permanent injunction and issued its written order on July 30, 2015. Appellant's  
6 appeal and current motion followed on August 3, 2015.

7 **II. Legal Argument**

8 **A. Although St. Mary's does not oppose a very limited stay of the district court's**  
9 **order pending this appeal, Appellant will not likely prevail on the merits.**

10 Contrary to Appellant's arguments, Appellant will not prevail on the merits of his appeal.  
11 The evidence presented by St. Mary's to the district court established by clear and convincing  
12 evidence that Aden Hailu is legally dead in accordance with the Uniform Determination of Death  
13 Act NRS 451.007 et seq, and accepted medical standards, including the standards outlined by the  
14 American Academy of Neurology and that St. Mary's and its physician followed all the mandated  
15 medical protocols and procedures in reaching the determination of death under NRS 451.007.

16 The testimony from St. Mary's physicians, Dr. Aaron Heide and Dr. Anthony Floreani, at  
17 the July 2<sup>nd</sup> and July 21<sup>st</sup> hearings, was credible and established that Aden Hailu meets the  
18 definition of death pursuant to the Uniform Determination of Death Act (NRS 451.007(1)(b))  
19 based on standards outlined by the American Academy of Neurology. None of the evidence  
20 presented by Appellant's witnesses, Dr. Paul Byrne, Dr. Brian Callister and Dr. Scott Manthei  
21 negated the substantial, compelling and credible evidence presented by St. Mary's. Moreover, the  
22 medical plan of care and discharge plan orally proposed by Appellant was neither compelling nor  
23 convincing as a best interest plan of care for Aden Hailu because it was not sufficiently supported  
24 by the medical evidence. *See* NRS 159.073(1)(c)(1)(I). Thus, based on the insufficient medical  
25 evidence presented by Appellant, and the overwhelming evidence presented by St. Mary's,  
26 Appellant is not likely to succeed on the merits of his appeal. Because of this, St. Mary's requests  
27 an expedited briefing schedule for the appeal.  
28

1           **B.     Because St. Mary’s will continue to suffer harm as long as the appeal is**  
2           **pending, St. Mary’s requests a very limited stay and an expedited briefing**  
3           **schedule.**

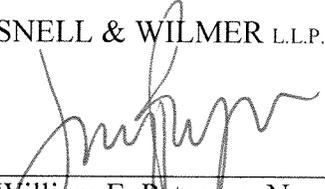
4           The balance of the hardship weighs in favor of St. Mary’s. As long as the appeal is  
5 pending and a stay is in place, St. Mary’s will be compelled to administer useless life sustaining  
6 treatments to a dead person and there is a hardship on the hospital and its staff required to  
7 administer this useless treatment in violation of the law, and its code of ethics and ethical  
8 principles of morality by licensed physicians. Moreover, the public interest strongly favors St.  
9 Mary’s because the public policy, as manifested by the Uniform Determination of Death Act NRS  
10 451.007, is to eliminate and preclude these types of disputes and debates from being adjudicated  
11 and resolved in courtrooms. There is also a clear public interest in medical professional making a  
12 final determination of death in these circumstances, and under the Uniform Determination of  
13 Death Act, there is a strong public interest in the proper treatment of Aden Hailu after a  
14 determination is made consistent with NRS 451.007(1)(b). Although Appellant argues his  
15 competing doctors contend Aden Hailu is alive, Appellant ignores the fact that the district court  
16 found those doctors not to be credible. Thus, as long as a stay is in place, St. Mary’s will  
17 continue to suffer harm. St. Mary’s, therefore, requests a very limited stay of the district court’s  
18 order.

18           **III.     Conclusion**

19           Based on the foregoing, and because this matter has been ongoing since April 2015, St.  
20 Mary’s does not oppose a limited stay of the district court’s order so long as the briefing schedule  
21 can be expedited and a determination of the appeal is reached expeditiously.

22           Dated: August 4, 2015

SNELL & WILMER L.L.P.

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**CERTIFICATE OF SERVICE**

This document was filed electronically with the Nevada Supreme Court on August 4, 2015. Electronic service of this document shall be made in accordance with the Service List as follows:

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