WISCONSIN COURT OF APPEALS
DISTRICT II

ALLEN GAHL, Attorney-in-Fact
On behalf of his principal, JOHN J. ZINGSHEIM,

Petitioner-Respondent,

Appeal No. 2021AP001787FT

v.

AURORA HEALTH CARE INC.
d/b/a/ AURORA HEALTH CARE, INC.-SUMMIT,

Respondent-Appellant,

PETITIONER-RESPONDENT'S BRIEF

APPEAL FROM THE CIRCUIT COURT OF WAUKESHA COUNTY,
THE HONORABLE LLOYD V. CARTER PRESIDING –
CIRCUIT COURT CASE NO. 21-CV-1469

Submitted by: Karen L. Mueller Wis. Bar # 1038392
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on behalf of his principal, John J. Zingsheim

ISSUE PRESENTED

The issue before the court of appeals is whether a circuit court has the authority to compel a health care provider to administer a medical treatment that the medical health care system asserts fell below its "professional standard of care" regarding Patient Safety. The circuit court's actions said it did have that authority.

STATEMENT OF THE CASE

I. NATURE OF THE CASE

This case is a referendum on the efficacy and safety of Ivermectin for the sake of John Zingsheim and many other patients currently dying in other hospitals throughout the State of Wisconsin, that are also being refused similar treatment.

But this case is also about the larger question of whether the courts should be prohibited from reviewing, intervening or even reversing life and death decisions when they are actually being made in Hospital Board Rooms rather than by the doctor's caring for their individual patients. The state's many hospital systems have recently adopted a "one-size fits all" Covid-19 Protocol encouraged by the National Institute of Health (NIH) and the Centers for Medicare and Medicaid (CMS) through an intense propaganda campaign and the use of financial incentives/rewards for using some select drugs and by prohibiting the use of other drugs such as Ivermectin, all the while ignoring hospital systems' statutory obligations under patient rights, significant patient safety concerns with dangerous drugs, contractual rights and obligations, patients' personal autonomy and bodily

integrity rights, informed consent rights and the individual physical differences and co-morbidities of patients.

A prohibition such as the one being proposed would be disastrous for the citizens of Wisconsin and their loved ones that become sick with diseases such as Covid-19, where the drugs that are most effective, carry low profit margins and are therefore banned by those more concerned with patient bed profitability than patient safety.

II. PROCEDURAL STATUS OF THE CASE AND DISPOSITION IN THE TRIAL COURT

The Honorable Judge Lloyd Carter signed an order on Oct. 12, 2021 compelling the Respondent-Appellant to administer Ivermectin to John Zingsheim. The Respondent-Appellant did not comply with this order and instead filed an appeal with the Second District of the Wisconsin Court of Appeals. The next day Judge Carter revisited his decision following an *ex parte* letter from opposing counsel. See Otjen Letter 10/12/21. On Oct. 13, 2021 Judge Carter agreed to modify his previous order to state that the Petitioner-Respondent could bring in an outside doctor to administer the Ivermectin as long as the hospital could credential him and as long as the Respondent-Appellant was granted complete immunity for the administration of the Ivermectin and any ensuing harm caused to John Zingsheim because of the administration of Ivermectin. The Petitioner-Respondent, Allen Gahl agreed to all of these terms.

Just as the Petitioner-Respondent was completing the grant of immunity/ waiver agreement and was intending to have his chosen doctor leave for Waukesha

to administer the Ivermectin, the 2nd District Appellate Court of Wisconsin accepted the Respondent-Appellant's' Petition for Review and stayed the decision of the circuit court. Petitioner-Respondent then Petitioned for a by-pass to the Wisconsin Supreme Court. The Petition for by-pass was denied on Oct. 25, 2021 so the 2nd District Appellate Court retained jurisdiction over this case.

III. STATEMENT OF FACTS

John Zingsheim was diagnosed with Covid 19 and first was admitted to Hartford Hospital in Aurora's medical system and was then transferred to Aurora Medical Center-Summit, herein after known as "Respondent-Appellant. He appointed his nephew Allen Gahl to act as his Health Care Power of Attorney on Sept. 18, 2021 using a Health Care Power of Attorney form that follows the requirements and language found at Wis. Stat. 155.30. On Oct. 6, 2021 the HCPOA document was activated by two physicians.

Before Mr. Zingsheim was intubated and placed in a drug-induced coma, he told his children with the help of the hospital chaplain and a telephone propped up to his head, that he wanted to have Ivermectin prescribed and administered to him. Mr. Gahl, hereafter known as the "Petitioner-Respondent," repeatedly asked for Ivermectin to be administered to his uncle after he was intubated and placed in a coma. The hospital refused to give John Zingsheim, the "Principal," the potential life-saving drug even though doctors had no other medical treatments to offer him and even pushed the family for a "comfort care" only decision.

Petitioner-Respondent submitted the "Emergency Petition for Declaratory and Injunctive Relief" on Oct. 7, 2021 to the Waukesha County Circuit Court with

the belief the John Zingsheim had only days to live after having been placed on a ventilator, with a diagnosis of Covid 19. Petitioner-Respondent sought to compel a staff member of Aurora Medical System – Summit, hereinafter referred to as the "Respondent-Appellant" to treat John Zingsheim with the drug that he had requested prior to being put into a drug-induced coma.

The ability to file Allen Gahl's Petition arose out of the duties, responsibilities and powers he obtained as his uncle's Health Care Power of Attorney. It was Mr. Gahl's right and duty under Wisconsin's Health Care Power of Attorney statute to file that petition. See Wis. Stat. 155.30. The Circuit Court ordered the hospital to administer the Ivermectin, but the Respondent-Appellant continued to withhold the medical treatment, sent a communication to the judge and received a modified order the next day which was never signed by Judge Carter.

In the Petition, Petitioner Respondent Allen Gahl asked that that the Respondent-Appellant be "compelled to abide by the Patient/Physician contract and their Hippocratic oath to 'Do No Harm.'" Petitioner Respondent asserted that the withholding of the Treatment "breaches the Patient/Physician contract and the Hippocratic Oath, as well as Mr. Zingsheim's right to self-determination under Wisconsin statute (51.61)(1)(fm) and common law and the Wisconsin State Constitution. See Art.1, §§ 1 & 9." Petitioner-Respondent asked the court to require the Respondent-Appellant honor the HCPOA that Mr. Zingsheim had signed naming Allen Gahl as his attorney-in-fact for health care decisions.

The Respondents-Appellant's in their brief stated that Ivermectin is not an FDA and CDC approved drug. But Ivermectin is, in fact, an FDA approved drug

which has been used for over 40 years for treating parasites in people. The Nobel Prize winning drug has been used safely around the world. Treating Covid-19 is considered an "off-label use of the drug. "Off-label" usage of a drug is a routine medical practice. No further FDA approval is needed. The National Institute of health (NIH) has approved the medication on Chart 2E on its website, as an anti-inflammatory drug for the treatment of Covid 19. Similar events such as these are occurring all around the state while hospitals continue to claim that Ivermectin is unsafe and smears it as having safety issues, when it does not.

Ivermectin, actually, falls beneath the hospital board members' financial standards. This is safe, potentially life-saving drug and the further withholding of it by hospitals will cause many more needless deaths in hospitals throughout the State of Wisconsin.

ARGUMENT

I. STANDARD OF REVIEW

The Circuit Court's signed order should not be overturned because the court had the discretion and legal authority to make the decision and did not abuse its discretion. See Spheeris Sporting Goods, Inc. v. Spheeris on Capitol, 157 Wis.2d 298, 459 N.W. 2d 581 (Wis. App. 1990.) (quoting Browne v. Milwaukee Bd. Of School Directors, 83 Wis. 2d 316, 336, 265 N.W.2d 559, 568, reh'g denied, 83 Wis. 2d 340b, 267 N.W. 2d 379 (1978)) ("The decision to grant or deny a temporary injunction is within the trial court's discretion and will only be reversed where to trial court abuses its discretion").

II. CIRCUIT COURTS HAVE THE LEGAL AND EQUITABLE AUTHORITY TO COMPEL A LICENSED HEALTH CARE PROVIDER TO RENDER MEDICAL TREATMENT

A. Legal causes of action empower a circuit court's authority to compel a Wisconsin licensed health care provider to render medical treatment:

1. HCPOA-Wisconsin Statute 155.30(1)

The Waukesha Circuit Court Judge Lloyd Carter had statutory authority to grant an injunction ordering Aurora Medical Center-Summit to administer the drug Ivermectin to Mr. John Zingsheim. It is found in Statute 155.30(1). The express statement of patients' rights found in the first paragraph of State of Wisconsin's official HCPOA form reads as follows:

"NOTICE TO PERSON MAKING THIS DOCUMENT"

"YOU HAVE THE RIGHT TO MAKE DECISIONS ABOUT YOUR HEALTH CARE. NO HEALTH CARE MAY BE GIVEN TO YOU OVER YOUR OBJECTION, AND NECESSARY HEALTH CARE MAY NOT BE STOPPED OR WITHHELD IF YOU OBJECT. . ." Wis. Stat. 155.30(1)

The plain meaning of the words "necessary health care may not be stopped or withheld if you object. . . "is clear and unambiguous. County of Dane v. Labor & Indus. Review Comm'n, 2009 WI 9, *21, 315 Wis. 2d 293 (stating "Statutory Interpretation begins with the language of the statute" and statutory language "is given its common ordinary, and accepted meaning"). Therefore, the statute means what it says. John Zingsheim and other patients in Wisconsin in similar circumstances, have a right to have necessary treatments or drugs such as Ivermectin administered.

In evaluating Wis. Stat. 155.30(1) the word "necessary" as in "necessary treatment" for John Zingsheim is one that may heal him and has minimal risk of killing him. The word "necessary" according to the Merriam-Webster Online Dictionary means: 1) absolutely needed: required; 2a) of an inevitable nature: inescapable; 2b (1)) logically unavoidable; 2(b)(2) that cannot be denied without contradiction; c) determined or produced by the previous condition of things; d) compulsory.

The necessity of Ivermectin for John Zingsheim is "required" if he is to have a chance at life. The necessity of this drug is "inescapable," given what has transpired in the last two months. It is "logically unavoidable" that Ivermectin should be tried because the risk of it harming him is very low and it may just heal his inflammation ravaged lungs. Because the other treatments that the hospital has tried on him have not worked the solution of giving John Zingsheim the Ivermectin has been "determined or produced by the previous condition of things." In fact, the hospital has been pushing comfort care for over a month which indicates the hospital has given up on him. He can either die from neglect by failing to treat him or he can possibly heal by giving him the Ivermectin.

There is no good reason for "withholding" the Ivermectin from John Zingsheim and Wis. Stat. 155.30(1) forbids the hospital from doing so, once the patient or their attorney-in-fact for health care objects to the "withholding" of a requested drug. See State v. LIRC, 136 Wis. 2d 281, 288 ("We will not read into the statute a limitation the plain language does not evidence"). Therefore, there are no other legitimate interpretations or limitations in the statute's words once they

have objected to the withholding which Petitioner-Respondent did on numerous occasions.

Petitioner-Respondent objected on his dying uncle's behalf, to the repeated and continuous "withholding" and denial of Ivermectin as drug of choice for his uncle's care. Under Wis. Stat. 155.30(1) it is clear from the plain meaning of the statute that the legislature duly enacted a health care power of attorney form and statute that declared the legislature's intent to give patients the ability to demand a specific medical treatment in Wisconsin.

The language found in the HCPOA form makes it clear that the person executing the HCPOA document has the power under the statute to receive the medical treatment that they request. Implicit in this statement due to the nature of the document being created, is that the Principal not only can expect their "*NECESSARY"* treatment requests to be honored by medical professionals, but also that this power is transferred to their attorney-in-fact for health care. Thus, for purposes of stating a claim upon which relief can be granted, John Zingsheim himself or his estate will have a cause of action against this hospital for withholding necessary treatment from him.

2.) The contractual relationships of the patient, doctor and hospital system make circuit court intervention necessary when hospital systems breach their contractual duties of "good faith and fair dealing."

John Zingsheim has an ongoing contractual relationship with the Aurora Medical Center and its doctors. This hospital has a contractual relationship with each of its patients. Patients go to the hospital in order to received medical services and then they agree to pay the bill or have their insurance do so.

Aurora breached its "good faith and fair dealing" duties to John Zingsheim. by withholding a safe, effective drug that would have helped him to recover in the earlier stages of Covid-19 and may still have some value in the later stages of lung disease. Instead, the hospital has cited "patient safety" as the reason for the substandard rating and subsequent withholding of Ivermectin while at the same time, through its doctors, it has prescribed dangerous drugs to Mr. Zingsheim without having any concerns about "patient safety" despite the safety warnings on the packaging of the drugs themselves. Remdesivir is a drug that the hospital has administered to John Zingsheim, despite its significant history of causing kidney damage. Another drug given to him, Baricitinib, can cause respiratory infections, blood clots and severe to lethal infections.

The Respondent-Appellant also breached its duty of "good faith" and "fair dealing" under the contract when its Board of Directors made a system-wide decision regarding the adoption of a dangerous NIH and CMS mandated Treatment Protocol that prohibits the use of Ivermectin for Covid 19 patients and then isolates and further endangers each of these patients through the administration of Remdesivir and Baricitinib (aka Omulient).

These drugs togethers form a joint Emergency Use Authorization which grants the hospital immunity. The administration of Baricitinib, is considered off-label for Covid-19 treatment. Remdesevir has around a 50% chance of causing severe kidney damage; but hospitals are incentivized to prescribe this drug because they will receive a 20% additional payment on the overall patient's hospital bill for doing so.

Aurora breached its duty of "good faith" under the contract by withholding the necessary treatment Petitioner-Respondent requested for an elderly, vulnerable adult, when that patient, John Zingsheim, in fact had both a statutory right through the powers granted under the Wisconsin HCPOA statute and through the contractual relationship with the hospital and its agents/doctors which carried at the very least, implicit promises to "Do No Harm" and that the hospital and its staff would try to help him. If these promises were not believed to be true by patients, why would anyone go to this hospital?

When board room decisions which are usually financial and/or political in nature replace actual "professional standard of care" patient safety concerns, then the breach of contractual obligations and the violation of statutory duties calls for the courts to intervene.

3) Violation of laws and informed consent -Wis. Stat. 448.30

The physicians in the medical health system are required to be licensed by the State of Wisconsin. Retaining their license requires that they not violate their rules of Professional Conduct. See Wis. Stat. 35.93, Chap. Med. 10. Health care providers are required to follow the laws which includes getting informed consent

from their patients by truthfully giving the risks, benefits and alternative treatments to the patient or the attorney-in-fact for health care regarding their care. See Martin v. Richards, 192 wis. 2d 156, 531 N.W. 2d 70 (1995) ("A doctor has a duty …to advise of alternative modes of diagnosis as well as of alternative modes of treatment for diagnosed conditions").

Health care providers regularly adhere to the "NO HEALTH CARE MAY BE GIVEN TO YOU OVER YOUR OBJECTION" because they understand that doing otherwise would be considered a "battery" under the law. See **Wis. § 940.19 Battery; substantial battery; aggravated battery**; See also **Wis. §§ 940.285(1)(ag)6 Abuse of Individuals at Risk** ("Deprivation of a basic need for food, shelter, clothing, or personal or health care, including deprivation resulting from the failure to provide or arrange for a basic need by a person voluntarily or by contract, agreement, or court order."); **940.23(2)(a) Second-Degree Reckless injury**- ("Whoever causes great bodily harm to another human being is guilty of a Class F felony"); **940.06 Second-degree reckless homicide(1)** ("Whoever recklessly causes the death of another human being is guilty of a Class D felony"). Therefore, for a health care worker to withhold life-sustaining water or food or necessary medical treatment, an act of omission, they would need a court order.

4) Huguley does not apply to this case

Respondents-Appellants have cited Texas Health Huguley, Inc v. Jones, Tex. App. 2021 as a case that provides guidance for 2nd District Appellate Court of Wisconsin to consider, due to the similar facts. But this Texas case in not controlling. It is also not persuasive because Wisconsin Health Care Power of

Attorney laws are different from Texas laws which do not empower patients to receive necessary medical treatments upon request, as the plain language of the Wisconsin statute does.

Secondly, Ms. Jones did not aver that there was a violation of the duty of "good faith and fair dealing" by the hospital as the Petitioner-Respondent has done here.

5) **Courts in other states have ordered Ivermectin/ pts improved**

A judge in Illinois on Nov. 05, 2021 told the hospital to "step aside" and give a dying man Ivermectin. See Ng Man Kwan as Health Care Proxy for Sun Ng v. Edward-Elmhurst Healthcare, Case No. 2021CH000427-136, Du Page Co, Ill. 11/5/21 (judge stated: "I am not forcing this hospital to do anything other than to step aside") This previously dying man left the hospital on November 16, 2021 and continues to recover at home.

In Wilson Tiffany as Daughter and Attorney in-Fact for Leslie Pal v. Advocate Condell Medical Center, Case No. 2021MR000957, Du Page, Ill, 09/17/21 the court granted a temporary mandatory Injunction allowing patient to finish Ivermectin and to allow Dr. Bain emergency temporary privileges to administer drug personally.

CONCLUSION

The circuit court did not exceed its authority when it ordered Respondent-Appellant to administer Ivermectin to the John Zingsheim. It also was within its authority to order the hospital to allow an outside physician to provide the treatment

under the HCPOA statute Wis. Stat. 155.30 and the hospital/patient contract(s). Since Aurora Medical Center-Summit chose to not follow the first order, the Respondent-Appellant has no reason to now complain that it should not be ordered the second alternative--having an outside physician or nurse to come in to administer the drug. That was and is the hospital's choice. This Honorable Appeals Court should affirm Judge Carter's original, signed order.

Dated this 17th day of December, 2021

Amos Center for Justice and Liberty

Attorney for Allen Gahl, Attorney-in-fact, on behalf of his Principal, John Zingsheim.

Electronically signed by Karen L. Mueller
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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in § 809.19(8)(b) and (c) for a brief and appendix produced with a proportional font. This brief used 3219 words.

I have submitted an electronic copy of this brief which complies with the requirements of § 809.19(12).

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 15h day of December, 2021

Amos Center for Justice and Liberty

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