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6 *Plaintiff, in propria persona*

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **COUNTY OF SANTA CLARA**
9 **CIVIL DIVISION UNLIMITED JURISDICTION**

10 **JEFFREY R. GOLIN,**
11 **ELSIE Y. GOLIN,**
12 **NANCY K. GOLIN,**
13 *Plaintiffs*
14 v.
15 **CLIFFORD B. ALLENBY,**
16 *et al*
17 *Defendants*

No.: 1-07-CV-082823

**SUPPLEMENTAL MEMORANDUM OF
POINTS AND AUTHORITIES OF PLAINTIFF
JEFFREY GOLIN IN OPPOSITION
TO DEMURRERS OF STANFORD HOSPITAL
AND CLINICS, INC.**

Judge: Hon. Thomas P. Breen¹
Department: 5
Date: September 17, 2007
Time: 9:00 a.m.

LEGAL ARGUMENT

18 Stanford deliberately seeks to materially mislead the Court concerning the properly
19 pleaded core facts of the case found in the complaint in several significant ways that we
20 must immediately correct here to disabuse the court of this confusion, that were not ex-
21 plained in plaintiff Jeffrey Golin's original MPA in opposition to Stanford's Demurrer,
22 filed September 10, 2007.

23 **I.SO-CALLED "TRIGGERING EVENT" MISREPRESENTS FACTS PROPERLY**
24 **PLEADED IN COMPLAINT AND FAILS FOURTH AMENDMENT THRESHOLD**
25 **TEST**

26 Stanford repeatedly refers to the "triggering event" in the statement of facts supposedly
27 being Nancy's wandering away and thus *delaying her anti-seizure medication dosage* at
28 8pm the previous evening. Until now in 6 years of litigation, among all the outlandish and
constantly changing excuses given, no party has yet suggested the creative notion that *miss-*
ing this dose was considered the ultimate triggering event, not at trial, not in the pleadings,

¹ Retired judge of the superior court sitting under assignment by the Chairman of the Judicial Council.

1 and the parents have never had to defend their case on that basis before this. The com-
2 plaint, which is to be taken as true, never alleges missing the evening dose as the “trigger-
3 ing event”, and it was not. This event even if accepted as such furthermore cannot possibly
4 meet the threshold tests requiring that Nancy was removed to the hospital, ostensibly for
5 her own mental health under 5150, 5250.

6 What Stanford is referring to was the November 14, 2001 elopement of their autistic
7 daughter, Nancy Golin, from an upscale light commercial district in Palo Alto, just before
8 the family was about to go out to dinner together around 8:30pm. Nancy usually received
9 her Phenobarbital anti-seizure medication promptly at around 10pm every night, because
10 her propensity to have seizures seemed to be greater at night. This 300mg/day was the
11 same dosage that her regular long-term neurologists starting with Palo Alto Medical Center
12 had prescribed for her since 1991, with the target goal of 45-50 mcg/ml, as expert witnesses
13 testified at trial.

14 When Mrs. Golin briefly went to the toilet, thinking that Nancy was soundly asleep in
15 the back of their new van, Nancy disappeared and could not be found after an all night
16 search. The parents reported her disappearance almost immediately and participated in the
17 search themselves. She walked up the driveway on her own the next morning during the
18 search, well, grinning and happy to see her parents. As soon as she returned, Mrs. Golin
19 took her into her business unit and gave her the missing dose of Phenobarbital.

20 A personal seizure without warrant, emergency or probable cause is the *sine qua non* of
21 a claim of infringement of the 4th Amendment right to freedom from unreasonable seizure.
22 The elements of such a claim include the requirement that there be an immediate and immi-
23 nent injury or irreparable harm requiring immediate police action : *Rogers v. County of San*
24 *Joaquin*, 487 F.3d 1288 (2007); *Ram v. Rubin*, 118 F.3d 1306 (1997), without which the
25 detention constitutes false arrest or wrongful imprisonment, devoid of probable cause for a
26 5150 hold and disqualifying any claims of qualified immunity.

27 This requires far greater than a perception of possible risk of neglect or abuse. Indeed,
28 one searches in vain for any authority to remove a dependent adult under no imminent risk
of irreparable harm from his home or family under 5150 of the LPS act, merely for alleged

1 suspicion of potential abuse. This triggering event fails to even approach the necessary re-
2 quirements of this standard.

3 This event fails to qualify as probable cause for detaining Nancy on a 5150 for the fol-
4 lowing reasons:

- 5 1. No immediate harm came to Nancy as a result, and she did not have seizures at the time
6 she was taken. Her missed medication was given by her mother immediately on return
7 in accordance with her doctor's past instructions in such a situation, before the police
8 removed Nancy to Stanford. There was no longer any emergency immediately after she
9 returned.
- 10 2. During trial, expert witness Dr. Kaplan testified that one of the good things about Phe-
11 nobarbitol is that it was very "forgiving" because it was a slow-acting drug and adjust-
12 ments in blood level occur very slowly after ingestion.
- 13 3. When she was admitted to Stanford, neurologists measured her Phenobarbitol levels at
14 49.3, within the normal range for Nancy, and Stanford's own neurologist stated in the
15 chart, "her level was good on admission".
- 16 4. The real harm Stanford doctors did next made everything that parents' so-called trigger-
17 ing event pale into insignificance. Believing for some reason that Nancy's established
18 anti-seizure medication levels as shown on the prescription bottle that accompanied
19 Nancy with the police to the hospital were wrong, psych doctors cut her dose on admis-
20 sion to the hospital in half, throwing her into seizures from undermedication that finally
21 required Ativan to be administered.
- 22 5. They failed to call the doctor whose name was on the prescription bottle for referral, an
23 essential protocol in all hospitals. Instead Stanford pharmacy counted the number of
24 pills in the bottle, filled out a form, and then disposed of the prescription at the hospital
25 showing the doctor's name and medication.
- 26 6. Missing a single dosage of this particular medication delayed by a few hours cannot
27 possibly be described as probable cause for a removal, wrongful imprisonment, kidnap-
28 ping, medical malpractice, and assault and battery, in a 5150 hold. None of the statuto-
rily defined reasons a person can be involuntarily detained under 5150 of the LPS act
were present.

1 **II. STANFORD MISREPRESENTS MATERIAL FACTS OF COMPLAINT, IMPLY-**
 2 **ING REMOVAL FROM FAMILY, STANFORD DETENTION, AND RELEASE**
 3 **TO EMBEE MANOR WAS “COURT-ORDERED”**

4 It should be made clear, contrary to the implications of defendants meant to confuse and
 5 pass responsibility, that at the time Stanford retained custody of Nancy at the hospital in
 6 spite of her 5250 denial, and their negligent evaluation, through the time that Nancy was re-
 7 leased to Embee Manor, a non-custodial caregiver, no one was in possession of any valid
 8 court order granting them custody or placement of Nancy; (MPA 423.16). **THERE WAS**
 9 **NO COURT OR TEMPORARY CONSERVATOR APPOINTED DURING PERIOD**
 10 **OF STANFORD STAY KEEPING NANCY AT STANFORD, SENDING NANCY TO**
 11 **EMBEE OR ANYWHERE ELSE. NANCY WAS NOT REMOVED FROM HER FAM-**
 12 **ILY PURSUANT TO ANY COURT ORDER, AS THE AG AS MISREPRESENTED**
 13 **ALSO. That is what the 4th Amendment Claim is all about.**

14 Thus at that point there was no conservator, temporary or otherwise, that could deter-
 15 mine placement. There was no placement! Law enforcement’s purported role ended after
 16 the 5150 hold, when Stanford medical professionals knew and should have found Nancy
 17 unqualified for 5250 “intensive treatment” by virtue of grave disability. Police did not
 18 evaluate Nancy under §5150, *Stanford psychologists did* it. That is the reason for the 5150
 19 evaluation, to be performed by doctors not police. The police were in no position to force a
 20 negligent medical or psychological conclusion that would have ordered Nancy’s 5250 hold
 21 keeping her at Stanford after 72 hours.

22 Stanford admits this (MPADemurrer, p 10), but then states that Stanford was obligated
 23 to follow the lawful instructions of the Court and duly appointed conservator with respect
 24 to matters within the powers of the conservatorship. Again this is deliberately misleading
 25 because at Stanford ***there never was a conservator or court giving these orders*** and no
 26 state official had any legal authority over Nancy (See, Cal. Hlth. & Safety Code §416.23,
 27 under which Title Nancy was state-conserved.)

28 Palo Alto Police did not have a court order or temporary conservatorship; they only had
 a TRO against the parents that expired the day the parents went to pick Nancy up, for lack
 of prosecution. Stanford *never* had one. APS *never* had one. Embee never had one.

1 SARC did not have one, until February 4, 2003, 14 months later, when DDS was granted
2 temporary conservatorship after the parents were exonerated and SARC was delegated re-
3 sponsibility for the DDS conservatorship. The claim of custody, found in APS records, was
4 merely asserted and not court ordered.

5 All of that was done extrajudicially by these defendants, who admitted on record that
6 they knew what they were doing was **ILLEGAL**.

7 Stanford says that “it was the Court, not the Moving Defendant, [that] holds the power
8 to determine the least restrictive and most appropriate placement for Nancy”. The problem
9 with this argument is that *at this point, during the Stanford Stay, there was no court in-
10 volved yet authorized to determine placement*. This constituted abduction, kidnapping,
11 wrongful imprisonment, and Stanford aided and abetted in this action.

12 When in our complaint we stated that “APS and SARC assumed custody at the
13 hospital”, that was *not meant to allege legal custody* but merely asserted physical custody,
14 presumed in APS records and no where else. No court order exists that legalized that effec-
15 tive abduction and kidnapping by the state. Stanford Hospital’s legitimacy over custody of
16 Nancy ended when the 5150 hold was FALSELY extended to a 5250 for “intensive treat-
17 ment” despite that the law was not being followed. Beyond that there was no court order
18 granting physical custody to anyone for the next 11 months and to SARC or APS for the
19 next 14 months.

20 **III. PREVIOUS PROCEEDINGS ARRIVING AT DENIALS OF STANDING TO**
21 **REPRESENT DAUGHTER WERE NOT “EVIDENTIARY”, NOT LITIGATED**
22 **AND NOT ENTITLED TO RES JUDICATA OR COLLATERAL ESTOPPEL**

23 Stanford represented in its demurrer that the parents lacked standing to represent their
24 daughter as guardians ad litem, *as a result of evidentiary hearings*. This is a blatant false-
25 hood and should be stricken. There were never any evidentiary hearings involved in this.

26 There was only one evidentiary hearing in the entire case, and that was never held on the
27 question of who should represent Nancy as Guardian Ad Litem in a lawsuit. Every other
28 hearing or determination concerning standing of the parents to represent Nancy was a status
review hearing, not an evidentiary hearing. To date there has never been any hearing or
proceeding to determine, based on factual finding, that either parent could not represent

1 their daughter in a liability lawsuit to protect Nancy Golin's legal interests where a conflict
 2 of interest existed between Nancy and her conservators. In no way could any of these pro-
 3 ceedings qualify for *res judicata* or collateral estoppel preclusion. An appointment of GAL
 4 is for one action only and does not apply to any other court proceedings. Throughout the
 5 period of federal court litigation the parents were unrepresented and it was the sine qua non
 6 of the case that they were not allowed to represent their daughter without an attorney. That
 7 lack has been mooted now by appointment of legal counsel. The GAL order is an interlocu-
 8 tory order and cannot be applied to any other court.

9 Therefore there is no merit to the argument that because one court allegedly declined to
 10 appoint Mrs. Golin or anyone else that could represent Nancy, has any binding effect upon
 11 any other court whatever. The most recent order of the Santa Clara County Probate Court,
 12 barring Elsie Golin or John Lehman from being guardians ad litem "permanently" without
 13 any defined basis has no valid effect on any other court or proceeding, may be reversed
 14 here, and is patently unjustifiable given the lack of any evidentiary support for finding of
 15 unfitness to serve as GAL.

16 The 2003 conservatorship trial only concerned the appointment of a conservator, not a
 17 guardian ad litem, and the question of GAL standing was never litigated in any court. If it
 18 were not so, Mrs. Golin or anyone that had any relationship to the Golins would be barred
 19 from advocating for their daughter forever, in any court, under any circumstances, and that
 20 would be a curiously harsh result coming from the mild and discredited findings that were
 21 reached 4 years ago.

Date(s)	Proceeding	Court	Who represented Nancy	Golins applied /denied standing?	Why?	Evi- den- tiary?
10/15/02	Temporary conser- vatorship, initial	Santa Clara County Probate	Public Defender	No application to for GAL	Unresolved Criminal charges	NO
2/4/03	Temporary conser- vatorship	Santa Clara County Probate	Public Defender	No application for GAL	N/A	NO
9/29/03-1//1 5/03	Limited Conserva- torship Trial	Santa Clara County Probate	Public Defender	Objected to Public Defender, no ap- plication for GAL	N/A but <u>not on GAL ques- tion, only conservatorship</u>	YES
10/23/03-4/ 6/04	1983 Federal Law- suit for civil rights and tort claims	Northern Dis- trict of Califor- nia	No one, parents attempted	Applied/Denied	Improper JN of probate de- cision, Unrepresented par- ent-petitioners	NO
5/4/04- 8/16/05	Federal 1983 civil rights appeal and en banc review	Ninth Circuit COA	Parents attempted	Unrepresented Appealed from court below	Unrepresented parent-peti- tioners	NO
12/14/05- 3/27/06	Petition for Certio- rari	US Supreme Court	Appeal	Appealed	No opinion	NO

Date(s)	Proceeding	Court	Who represented Nancy	Golins applied /denied standing?	Why?	Evidentiary?
4/26/06-3/27/07	Refiled unexhausted pendent claims, civil rights/tort lawsuit	Sacramento County Superior Court Civil	8/16/06-11/2/06 Mrs. Golin	Granted GAL standing 8/16/06	Ex parte motion, represented by attorney Wallace	NO
			11/2/06	Removed GAL ex parte at SARC motion	Improper JN of 2003 conservatorship opinion, no hearing, no evidence	NO
			Unrepresented 11/2/06-4/10/07			
3/27/07-present	Venue of state action changed to Santa Clara County	Santa Clara County Superior Court	4/10/07-4/23/07 Mrs. Golin	Granted GAL standing 8/16/07	Ex parte motion, represented by attorney Shapiro	NO
			4/23/07	Removed GAL ex parte at SARC's motion	Improper JN of 2003 conservatorship opinion, no hearing, no evidence	NO
			Unrepresented	Applied/Denied	No GAL appointed, probate attempted to appoint potential defendant	NO

CONCLUSION

For reasons stated herein, Stanford's motion to strike and demurrer should be denied.

Submitted this 13^h day of September 2007, at San Jose, CA.

Jeffrey R. Golin, in pro per

PROOF OF SERVICE

I am employed in the County of Santa Clara, State of California. I am over the age of 18 and not a party to the within action; my business address is 93 E. San Carlos St., San Jose, CA 95112. I am readily familiar with the business practices of the collection and processing of correspondence, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal Service the same day as it is placed for collection.

I served the following documents to the parties who have appeared in this case:

SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES OF PLAINTIFF JEFFREY GOLIN IN OPPOSITION TO DEMURRERS OF STANFORD HOSPITAL AND CLINICS, INC.

Via Federal Express Next Day Business Day and paid for by sender to the persons noted on the attached Service List

Via e-mail to the persons noted on the attached Service List

Via Personal Delivery to the persons noted on the attached Service List.

Via First Class Mail to the persons noted on the attached Service List

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed September 13, 2007, at San Jose, California.

Nathan Nava