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 Attorneys for Plaintiff

**FILED DISTRICT COURT**  
 Third Judicial District

OCT 18 2004

SALT LAKE COUNTY

By  Deputy Clerk

**IN THE THIRD JUDICIAL DISTRICT COURT  
 IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

IN RE JESSE STEVEN KOOCHIN, minor,  
 by and through his parents and guardians,  
 Steven and Gayle Koochin,

Petitioners

EX PARTE TEMPORARY RESTRAINING  
 ORDER

Civil No:

Judge:

The court, having reviewed petitioners' ex parte motion for temporary restraining order, memorandum in support and supporting affidavits of Gayle Koochin and David S. Pace, it appears as follows:

1. Jesse Koochin was diagnosed with Medulablastoma of the brain with metastasis to the brain and spine on April 19, 2004.
2. He was admitted to Primary Children's Medical Center on or about September 15, 2004, where he was placed on a ventilator.

3. Following complications arising after October 8, 2004, Jesse has been in a "unresponsive coma," and his doctors at Primary Childrens have determined that Jesse is brain dead, based on a time lapse test (observations from two doctors over a 6 hour interval).
4. Doctors at Primary Childrens have indicated that Jesse is brain dead as of 4:30 p.m. on October 12, 2004.
5. Despite this finding, Jesse continues to be pink, demonstrate motor activity, and continues to be on a ventilator.
6. Jesse was in a similar coma from May 23, 2004, to July 11, 2004, when he returned to complete function and was removed from his ventilator.
7. Jesse's parents Gayle and Steven Koochin continue to observe Jesse and observe that his condition, health, and motor response is better today (October 13, 2004) than it was yesterday, when Jesse was declared brain dead.
8. Doctors have not performed either an EEG or Blood perfusion study to definitively test for brain activity within Jesse Koochin.
9. Based on personal observation, Jesse's parents believe Jesse's current state appears to be identical to one from which he recovered several months previously.
10. Doctors at Primary Childrens have stopped providing Jesse's prescribed medications, have removed his intravenous line, and are threatening to remove his ventilator as of 4:30 p.m. today, October 13, 2004.

- 11. Without immediate and prompt Court intervention the plaintiffs and the minor child will suffer immediate and irreparable harm.
- 12. The Court should issue an immediate order protecting the options of the petitioners and preserving the minor child from a denial of continued medical treatment that will end the child's life.
- 13. Without prompt Court intervention the Hospital and staff will remove all remaining life support from the child.

WHEREFORE:

THE COURT having made the above findings and for good cause appearing.

It is hereby Ordered:

- 1. That medical care and treatment be restored to the Jesse Koochin, the minor child;
- 2. That Jesse Koochin be released to his parents custody for further treatment and /or transport;
- 3. That doctors at Primary Childrens be enjoined from declaring Jesse Koochin dead without having an EEG test and /or blood profusion study (for brain activity) performed as approved by the minors parents.
- 4. That doctors at Primary Childrens be enjoined from removing the ventilator from Jesse Koochin except at the direction of his ~~parents~~ *the court.*

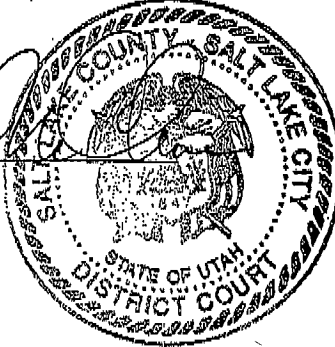
*DR*  
*10-13-04*  
*[Signature]*

- 5. That Jesse Koochin be provided with his prescribed medications and intravenous fluids, 10-13-04 medications, and nutrition at the direction of ~~his parents~~. The Court. *Doc D97 Allen*
- 6. That this matter be set for further hearing before the Court on the 27 day of October 2004, at the hour of 10:00 AM.

DATED this October 13<sup>th</sup>, 2004.

BY THE COURT

*[Handwritten Signature]*



DAVID S. PACE (8252)  
STACEY G. SCHMIDT, (6647)  
PACE & HUGHES, L.L.C.

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**IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

IN RE JESSE STEVEN KOOCHIN, minor,  
by and through his parents and guardians,  
Steven and Gayle Koochin,

Petitioners

ORDER

Civil No: 043901708

Judge: Barrett

This matter came before the Court on October 27, 2004, before the Honorable Judge Barrett. The Petitioners, Steven and Gayle Koochin, were present and represented by David S. Pace, and Primary Children's Medical Center was represented by David Erickson. The parties having reached an Agreement and Stipulation, and having signed the same and presented it to the Court, the Court enters the following Order in accordance with that Agreement and Stipulation:

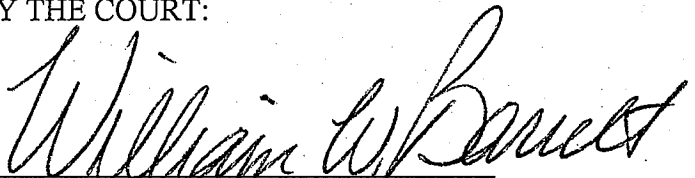
**IT IS HEREBY ORDERED:**

1. The Ex Parte Temporary Restraining Order signed in this case on October 13, 2004, is dissolved.

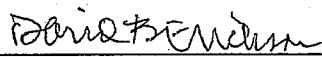
2. Primary Children's Medical Center has no ongoing right or responsibility for any further medical care of the minor child Jesse Koochin since October 15, 2004.
3. Primary Children's Medical Center will not file any death certificate with the Utah Department of Vital Statistics with respect to the minor child Jesse Koochin, and that no future death certificate will be issued or signed by Primary Children's Medical Center for any time while Jesse Koochin was in the care of Primary Children's Medical Center.
4. Primary Children's Medical Center has no ongoing right or responsibility concerning any medical equipment currently being used by the minor child Jesse Koochin.
5. No further issues or duties exist with relation to the Ex Parte Temporary Restraining Order of 10/13/04 as it relates to Primary Children's Medical Center.

DATED this 27 day of October, 2004.

BY THE COURT:

  
DISTRICT COURT JUDGE

APPROVED AS TO FORM:

  
David B. Erickson  
Attorney for Primary Children's Medical Center

Dated 10-27-04

FILED  
THIRD DISTRICT COURT  
04 OCT 26 PM 4:24

**COURTESY COPY**

HEARING: OCT. 27, 2004  
10:00 a.m.

DAVID B. ERICKSON (#3788) BY           *W*            
Attorney for Primary Children's DEPUTY CLERK  
Medical Center

36 South State Street, 22<sup>nd</sup> Floor  
Salt Lake City, UT 84111  
Telephone: (801) 442-3810

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**IN THE THIRD JUDICIAL DISTRICT COURT**

**IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

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IN RE:

JESSE STEVEN KOOCHIN, minor, by  
And through his parents and guardians,  
STEVEN and GAYLE KOOCHIN,

Petitioners.

:  
: **MOTION TO DISSOLVE TEMPORARY**  
: **RESTRAINING ORDER AND DENY**  
: **PRELIMINARY INJUNCTION BASED**  
: **ON STIPULATION AND AGREEMENT**

:  
:  
: Case No. 043901708

:  
: Judge William W. Barrett  
:  
:

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Primary Children's Medical Center respectfully requests that this Court dissolve the Ex Parte Restraining Order entered on October 13, 2004 in this matter and refrain from entering a preliminary injunction. The Petitioners and Primary Children's Medical Center have now entered into a Stipulation and Agreement, a copy of which is attached as Exhibit A, which obviates the need for the hearing scheduled for October 27, 2004 at 10:00 a.m.

The Ex Parte Temporary Restraining Order was based on a representation that life-support for Jesse Koochin would be discontinued. That has not happened. In fact, Jesse has been

discharged from Primary Children's Medical Center and remains on a ventilator at a place undisclosed by the parents. By stipulation of the Petitioners, Primary Children's Medical Center has no further responsibility for providing care to Jesse.

The Stipulation and Agreement recognizes that "[n]o further issues or duties exist with relation to the Ex Parte Temporary Restraining Order of October 13, 2004 as it relates to Primary Children's Medical Center." (Stipulation and Agreement, ¶ 5.) In light of the agreement between the Petitioners and the Primary Children's Medical Center, the Rule 65A (e), U.R.C.P. elements for a preliminary injunction are absent, and the Temporary Restraining Order should be dissolved.

Thus, based on the Stipulation and Agreement, Primary Children's Medical Center respectfully requests that this Court dissolve the Ex Parte Temporary Restraining Order entered October 13, 2004, and deny a preliminary injunction.

DATED this 26<sup>th</sup> day of October, 2004.



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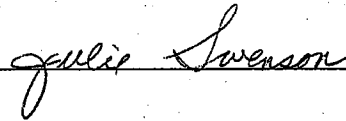
DAVID B. ERICKSON  
Attorney for  
Primary Children's Medical Center



CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing MOTION TO DISSOLVE  
TEMPORARY RESTRAINING ORDER AND DENY PRELIMINARY INJUNCTION BASED  
ON STIPULATION OF THE PARTIES was mailed this 26<sup>th</sup> day of October, 2004, by  
U.S. first class mail, postage prepaid, to the following:

David S. Pace  
Stacey G. Schmidt  
PACE & HUGHES, L.L.C.  
50 South Main, Suite 850  
Salt Lake City, UT 84144

  
\_\_\_\_\_

DAVID S. PACE (8252)  
STACEY G. SCHMIDT, (6647)  
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Attorneys for Plaintiff

**IN THE THIRD JUDICIAL DISTRICT COURT  
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IN RE JESSE STEVEN KOOCHIN, minor,  
by and through his parents and guardians,  
Steven and Gayle Koochin,

Petitioners

STIPULATION and AGREEMENT

Civil No: 043901708

Judge: Barrett

The Petitioners, Steven and Gayle Koochin, on behalf of their minor child Jesse Steven Koochin, by and through his attorney, David S. Pace, and Primary Children's Medical Center, by and through attorney, David Erickson, hereby enter into the following Stipulation and Agreement:

1. The minor child Jesse Steven Koochin was discharged from Primary Children's Medical Center on October 15, 2004.
2. Primary Children's Medical Center has no ongoing right or responsibility for any further medical care of the minor child Jesse Koochin since October 15, 2004.

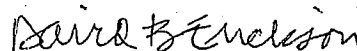
3. Primary Children's Medical Center affirms and agrees that it will not file any death certificate with the Utah Department of Vital Statistics with respect to the minor child Jesse Koochin, and that no future death certificate will be issued or signed by Primary Children's Medical Center for any time while Jesse Koochin was in the care of Primary Children's Medical Center.
4. Primary Children's Medical Center and the Petitioners agree that Primary Children's Medical Center has no ongoing right or responsibility concerning any medical equipment currently being used by the minor child Jesse Koochin.
5. No further issues or duties exist with relation to the Ex Parte Temporary Restraining Order of 10/13/04 as it relates to Primary Children's Medical Center.

DATED this 26 day of October, 2004.



David S. Pace  
Attorney for Petitioners

DATED this 26<sup>th</sup> day of October, 2004.



David B. Erickson  
Attorney for Primary Children's Medical Center