

Superior Court of California County of Alameda
Title: Spears v. Rosen
Case Number: RG15760730

This Tentative Ruling is made by Judge Stephen Pulido.

Counsel for Plaintiffs and Defendants are ORDERED TO APPEAR in Department 517, on April 19, 2018, at 3:00 p.m., on the Motion of Plaintiffs for a Bifurcated Bench Trial to Determine whether the American Association of Neurology and American Academy of Pediatrics Guidelines should be applied to the facts of this case to determine whether Plaintiff Jahi McMath, appearing through her Guardian Ad Litem, Latasha Nailah Spears, meets the definition of "brain death" under H&S Code Â§ 7180 (Uniform Determination of Death Act). See CCP Â§ 1048(b) (court has discretionary authority to order separate trials if to do so will further the interests of convenience, expedition and/or to avoid prejudice).

Based on the Court's review of the papers filed by Plaintiffs and Defendants and its familiarity with the procedural history of this matter, the Court is not inclined to make the bifurcation order requested by Plaintiffs' counsel. Instead, the Court intends to issue a Trial Setting Order that sets a separate trial on the issue of whether Plaintiff Jahi McMath is a person with the capacity and/or standing to prosecute the First Cause of Action of the First Amended Complaint for Professional Negligence. See CCP Â§ 367; and *Gantman v. United Pacific Ins. Co.* (1991) 232 Cal.App.3d 1560, 1566 (real party in interest is the person who has the legally conferred right to pursue the claim); and *Blumhorst v. Jewish Family Services of Los Angeles* (2005) 126 Cal.App.4th 993, 1001 (real party in interest is the person with a real interest in the outcome of the adjudication). "Person," as used in the Code of Civil Procedure, is defined by the Legislature in CCP Â§ 17(b)(6). In 1992, the Legislature enacted a provision to add unborn fetuses to the definition of a "person" under the law.

In the contemplated trial, the Court will determine whether Plaintiff Jahi McMath meets the legal definition of "brain death" pursuant to the criteria set forth by the Legislature in H&S Code Â§ 7180. If the Court determines that Plaintiff meets that definition, she will not be entitled to pursue the First Cause of Action for Professional Negligence. Although the issue of whether Plaintiff has the capacity or standing to pursue her claim is ordinarily a legal issue, the Court may not make the required determination as a matter of law if the parties present conflicting evidence regarding Plaintiff's condition. The Court's determination regarding Plaintiff's legal capacity or standing to pursue her medical malpractice claim against Defendants will be based on findings of fact underlying the issue of law. See *People v. Superior Court* (2002) 103 Cal.App.4th 409, 433 (jury makes credibility determinations and resolves underlying disputed factual issues regarding standing).

NOTICE: Effective June 4, 2012, the Court will not provide a court reporter for civil law and motion hearings, any other hearing or trial in civil departments, or any afternoon hearing in Department 201.

<https://publicrecords.alameda.courts.ca.gov/PRS/Case/CaseDetails/UkcxNTc2MDczMA%3d%3d>