

1 STATE OF ILLINOIS )  
 ) SS.  
2 COUNTY OF DU PAGE )

3  
4 IN THE CIRCUIT COURT OF DU PAGE COUNTY  
FOR THE EIGHTEENTH JUDICIAL CIRCUIT OF ILLINOIS

5 MAN KWAN NG, as HEALTH CARE )  
6 PROXY for SUN NG, )  
 ) No. 21 CH 427  
7 Plaintiff, )  
 ) JUDGE'S RULING  
8 -vs- )  
 )  
9 EDWARD-ELMHURST HEALTHCARE, )  
d/b/a EDWARD-ELMHURST HEALTH, )  
10 et al., )  
 )  
11 Defendants. )

12 EXCERPT FROM THE REPORT OF PROCEEDINGS  
13 taken at the video-conference hearing via Zoom  
14 of the above-entitled cause, before the  
15 Honorable PAUL M. FULLERTON, Judge of said Court,  
16 recorded on the DuPage County Computer Based Digital  
17 Recording System, DuPage County, Illinois, and  
18 transcribed by LILI B. CINTA, Certified Shorthand  
19 Official Court Reporter, commencing on the 5th day  
20 of November, A.D. 2021.

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1 PRESENT VIA ZOOM:

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LAW OFFICE OF RALPH LORIGO, by  
3 MR. RALPH LORIGO,  
and

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MAUK & BAKER, LLC, by  
5 MS. KIRSTIN M. ERICKSON,

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appeared on behalf of the Plaintiff;

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MONAHAN LAW GROUP, LLC, by  
7 MR. JOSEPH T. MONAHAN  
and

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MR. JOHN W. WHITCOMB,

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appeared on behalf of the Defendants.

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1           THE COURT: 21 CH 427, Inc. versus  
2 Edward-Elmhurst Healthcare et al. And if I could  
3 have the attorneys identify themselves, spell the  
4 last name and, for the record, just identify who you  
5 represent.

6           MR. LORIGO: Ralph Lorigo, L-o-r-i-g-o, on  
7 behalf of the plaintiff, your Honor.

8           MS. ERICKSON: Kirstin Erickson,  
9 E-r-i-c-k-s-o-n, on behalf of the plaintiff.

10          MR. MONAHAN: Good morning, Judge Fullerton and  
11 counsel. Joseph Monahan and John Whitcomb for  
12 Edward-Elmhurst Healthcare doing business as  
13 Edward-Elmhurst Health and Edward Hospital.

14          THE COURT: All right. Good morning to all.  
15 All right. We are continuing with this evidentiary  
16 hearing on this case. And Mr. Monahan has one more  
17 witness that the Court will hear from. So, let's  
18 proceed.

19                   \*       \*       \*       \*       \*       \*

20          THE COURT: All right. We are back on the  
21 record for Case No. 21 CH 427.

22                   All right. As I indicated earlier, I have  
23 had this case since Monday and then Tuesday and then  
24 yesterday and today. So, I have heard a lot. And I

1 understand the situation.

2 Mr. Monahan pointed out that what  
3 Plaintiffs are asking for is an extraordinary remedy.  
4 And that's true. They are asking for injunctive  
5 relief which is an extraordinary remedy. But I can't  
6 think of a more extraordinary situation than when we  
7 are talking about a man's life.

8 So, factually, Mr. Ng was admitted  
9 October 14th. He went on the respirator either on  
10 the 18th or 19th, and he is on a respirator today.  
11 That's 17 or 18 days still on a respirator. There  
12 is no dispute from the testimony of the doctors --  
13 Dr. Bain, as well as Dr. Greenhill and Dr. Pinsky --  
14 that his risk of dying is over 50 percent. He has a  
15 high risk of dying.

16 As I indicate, he's been on the ventilator  
17 for 17 or 18 days. And Dr. Greenhill acknowledged  
18 that someone in his condition being on a ventilator  
19 like that has a 10 or 15 percent chance of survival,  
20 taking into account his condition, etc.

21 So, the Court understands the bylaws and  
22 the policies of the hospital. And I will say that  
23 Edward Hospital and its doctors have an excellent  
24 reputation in the community. The bylaws are internal

1 documents for the operation of the hospital. I  
2 understand it. I understand Dr. Greenhill's  
3 testimony and Dr. Pinsky's testimony.

4           So, the issue is administering Ivermectin  
5 which is not an FDA approved drug. However, the  
6 document provided -- and it is in evidence -- is  
7 the NAH study. And specifically, Table 2-E lists  
8 Ivermectin and the side effects under the table  
9 adverse events -- number one, generally well  
10 tolerated; number two, dizziness; number three,  
11 pruritus; number four, nausea/diarrhea. These are  
12 the side effects for the dosage that's being asked to  
13 be administered.

14           So, the risks of the side effects the Court  
15 kept asking, and Mr. Monahan picked up on it. What's  
16 the downside? The risks of these side effects are so  
17 minimal that Mr. Ng's current situation outweighs  
18 that risk by one-hundredfold. Dr. Pinsky testified  
19 that the risk is that there is no benefit. So,  
20 the possible benefit this Court sees is helping save  
21 Mr. Ng's life with this drug.

22           Having said all of that, I need to look at  
23 the law. And the law that's being brought before me,  
24 this is a one-count Complaint asking for injunctive

1 relief with a declaratory judgment action. And for  
2 an action for declaratory judgment, Plaintiff --  
3 Plaintiff needs to have a tangible legal interest;  
4 there needs to be a defendant with adverse interest;  
5 and three, there is an actual controversy regarding  
6 that interest. That's the underlying requirements of  
7 a declaratory judgment. Those are present here.

8           So then we look at the requirements which  
9 you both stated with respect to an injunctive relief  
10 in this situation. And in Illinois, those four  
11 factors, clearly ascertainable right in need of  
12 protection. Despite the statute that Mr. Lorigo  
13 brought up and Mr. Monahan addressed, despite that  
14 statute, choosing a patient's ability to choose their  
15 own path to healthcare, especially in a situation  
16 where they have been on a ventilator for 17 and 18  
17 days, is clearly an ascertainable right in need of  
18 protection.

19           The second factor, an irreparable injury.  
20 The evidence that I heard and that has been brought  
21 before me, it's overwhelming that there is an  
22 irreparable injury in this situation. No adequate  
23 remedy at law. Again, clearly present in this  
24 situation. And the likelihood of success on the

1 merits, two-part test, the party moving for  
2 injunctive relief must raise a fair question as to  
3 the existence of the right claimed and show that it  
4 probably will be entitled to the injunctive relief if  
5 the allegations are proven.

6           It's here. The evidence in this case is  
7 overwhelming for this situation.

8           The balance of harms, another factor that a  
9 Court can consider. The balance of harms goes back  
10 to the Court's question what's the downside. The  
11 downside are risks to the side effects of the  
12 medicine. I have heard testimony from all doctors  
13 that all medicine has side effects. But the side  
14 effects here, again, are so minimal that the -- the  
15 right of a patient to choose to have this medicine in  
16 this type of situation where this Court believes he  
17 is -- he is basically on his death bed.

18           I did -- I did hear testimony -- actually  
19 more argument that you believe he is getting better.  
20 He has been on the respirator for the 18 days. I  
21 don't believe he is getting better. He may be in  
22 some stable condition. But again, the Ivermectin  
23 that's being requested, based on the risks and based  
24 on a patient's right to choose their ability, I am

1 granting the motion, the injunction.

2 I do want to say the Court is not -- I am  
3 not forcing this hospital to do anything other than  
4 to step aside. I am not forcing any doctor in Edward  
5 Hospital to do this. I am just asking -- or not  
6 asking -- I am ordering through the Court's power to  
7 allow Dr. Bain to have the emergency privileges and  
8 administer this medicine.

9 So, I am ordering that the defendants and  
10 their agents, assigns, and any other third parties  
11 acting on their behalf shall immediately allow  
12 Dr. Bain -- and only Dr. Bain -- temporary emergency  
13 privileges, solely to administer Ivermectin to this  
14 patient, Mr. Ng, pursuant to the order and  
15 prescription of Dr. Allen Bain.

16 With respect to that, Dr. Bain is only to  
17 deal with this patient. And any discussions he is to  
18 have with staff at Edward Hospital solely needs to  
19 deal with this patient and the administration of  
20 Ivermectin.

21 Also, there needs to be a release. So,  
22 that release needs to be provided to the hospital  
23 from Mr. Ng's daughter who has the proxy for  
24 healthcare. She needs to provide a release and



1 informed consent releasing Edward Hospital from any  
2 liability for administrating Ivermectin to this  
3 patient. And that release needs to be provided  
4 before any Ivermectin is administered.

5 So, I don't know -- Ms. Erickson, I don't  
6 know if you have the ability to do electronic orders  
7 or not.

8 MS. ERICKSON: Yes. Uh-huh.

9 THE COURT: Send me an order. Send it by  
10 Mr. Monahan.

11 MS. ERICKSON: Okay.

12 THE COURT: Send me the order. And I will sign  
13 off.

14 Mr. Monahan, you get to review the order  
15 before it's sent to me.

16 MR. MONAHAN: A couple of things.

17 THE COURT: Yes.

18 MR. MONAHAN: The daughter is going to sign a  
19 release in her individual name and in her -- in her  
20 role as proxy.

21 THE COURT: Yes.

22 MR. MONAHAN: And they are going to release any  
23 employee, officer, director, independent contractor,  
24 anybody who has anything to do with this. And the

1 time on that is from the date of his admission  
2 until --

3 THE COURT: Until his discharge, which we are  
4 all hoping for.

5 MR. LORIGO: I will submit the proposed release  
6 to you, Mr. Monahan, this afternoon. We have them.  
7 I will submit it to you this afternoon for your  
8 consideration.

9 THE COURT: In the order that I vacated on  
10 Monday, I had some language in there about releasing.  
11 And to Mr. Monahan's point, the release needs to  
12 release the hospital, its executors, administrators,  
13 employees, doctors, nurses, staff, successors,  
14 assigns, etc. So, make it complete. I really don't  
15 want to hear an argument on a release. I will, if I  
16 need to. But just make it complete and basically --

17 MR. LORIGO: I will, your Honor. I will.

18 THE COURT: I think you get what I am saying.

19 MR. LORIGO: Yes, I do.

20 THE COURT: Okay. I will look for the order.

21 MR. LORIGO: Thank you very much, your Honor.

22 THE COURT: What I'd like to -- well, I know  
23 this case is pretty much concluded. I would like to  
24 give it a status date for a couple of weeks. I'd

1 like to know what happens to Mr. Ng.

2 MR. LORIGO: I think that's certainly  
3 appropriate, your Honor. Whatever date you want, I  
4 would hope that two to three weeks from now we'd be  
5 hopefully out of that hospital.

6 THE COURT: Today is the 5th. How about on the  
7 19th, which is two weeks from today, just at 9:00,  
8 just a status.

9 MR. LORIGO: That will be fine, your Honor.

10 THE COURT: And it's via Zoom.

11 MR. MONAHAN: Judge, another thing is we don't  
12 have the medicine in our formulary. We just don't  
13 carry it. And so, it's -- I guess Dr. Bain is going  
14 to have to bring the appropriate medication.

15 MR. LORIGO: We can do that.

16 THE COURT: I would assume that's correct.

17 MR. LORIGO: That's fine, your Honor. We can do  
18 that.

19 THE COURT: Okay.

20 MR. LORIGO: Thank you very much, your Honor.

21 THE COURT: Thank you.

22 MR. LORIGO: Have a great weekend. I appreciate  
23 it.

24 MS. ERICKSON: Thank you.

1 THE COURT: You bet. I will look for the order.

2 MR. LORIGO: Thank you for all your attention,  
3 your Honor.

4 THE COURT: You are welcome.

5 MR. MONAHAN: Thank you, Judge.

6 THE COURT: You are welcome.

7 (Which were all the proceedings had  
8 at the hearing of the above-entitled  
9 cause, this date.)

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1 STATE OF ILLINOIS )  
2 COUNTY OF DU PAGE ) SS:  
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5 I, LILI B. CINTA, hereby certify the  
6 foregoing to be a true and accurate transcript of the  
7 computer-based digitally recorded proceedings of the  
8 above-entitled cause to the best of my ability to  
9 hear and understand, based upon the quality of the  
10 audio recording, pursuant to Local Rule 1.03(c).  
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17 Lili B. Cinta

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