

VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 26-CV-04742

In re: David Duprey

ENTRY REGARDING MOTION

Title: -Emergency Motion to Stay Enforcement of Probate Court Order issued
09/02/2026 (Motion: 1)
Filer: Jesse D. Bugbee
Filed Date: September 03, 2026

The Court held a hearing on this request for a stay on September 4, 2026. All parties were present, as were seven medical providers from Northwest Medical Center.

The Court denies the motion for a stay. The Court made its full findings on the record, but provides a written order to supplement that order.

Legal Standard

Barbara Duprey is a person under guardianship. Her Guardian filed a motion to change Ms. Duprey's goals of care to comfort care and consent to the withdrawal of a ventilator. The Probate Division held a hearing and issued an order on September 2, 2026:

Based on the uncontradicted medical testimony, the court finds by clear and convincing evidence that the continued ventilation offers no medical benefit and rather inflicts substantial pain and suffering upon the respondent. Therefore, it is Barbara Duprey's absolute best interest to transition to comfort care. The motion to change the goal to that of care and comfort measures and to consent to the withdrawal of ventilator support is granted.

Barbara Duprey's children Tina and David Duprey filed a notice of appeal the next day. There is no automatic stay of orders issued by the Probate Division in guardianship matters. V.R.P.P. 62. Appellants asked for a stay of that order pending consideration of the appeal.

The factors a court must consider in deciding whether to grant a stay are: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987).

There was no dispute among the parties that the children of Barbara Duprey would be irreparably harmed if a stay is not entered because without a ventilator their mother will die within a few minutes or hours. There is also no dispute that Barbara Duprey will be substantially

injured by a stay because she will continue to experience pain and interference with her dying process.

As a result, the hearing focused on the likelihood of success on the merits.

This is a case brought pursuant to 14 V.S.A. § 3075(f) and (g). Subsection (g) requires a guardian to obtain prior written approval from the Probate Division “before withholding or withdrawing life-sustaining treatment other than antibiotics.” The guardian is required to make that decision “consistent with the manner in which the person under guardianship would have given or withheld consent, provided there is sufficient information concerning the person’s wishes.” *Id.* at (f).

In making this determination, the guardian and the court in reviewing a guardian’s decision under this section shall:

- (1) Rely on written and oral expressions of the person under guardianship.
- (2) Rely on available information concerning the wishes, values, beliefs, and preferences of the person under guardianship if the person’s written and oral expressions do not provide sufficient information.
- (3) Follow the best interests of the person under guardianship if subdivisions (1) and (2) of this subsection are inapplicable. No decision to withhold or abate medical treatment will be based solely on the age, economic level, or level of disability of the person under guardianship.

Id.

As a result, the question of whether Tina and David Duprey can establish that they are likely to succeed on the merits depends on whether they can show that the Guardian (and the Probate Division) did not properly consider and rely on these factors.

Findings and Legal Analysis

As noted at the hearing, and by agreement of the parties, the Court considered the testimony provided to the Probate Division two days ago. The Court also took evidence from the parties at the hearing. The findings below and stated at the hearing are based on the clear and convincing evidence.

Barbara Duprey is 81 years old and her body is in the dying process. She has no prospect of recovery. She has multiple organ systems failing. As of two days ago, her doctor opined that because she could not be fully medicated for pain, she was experiencing torture. Dr. Shank testified today that Barbara Duprey has proceeded further in the dying process, is not showing outside signs of pain such as grimacing at this point and can no longer express pain. However, medical treatment is interfering with the dying process and doing so without the ability to medicate for the pain they believe she is experiencing.

Tina and David Duprey are the children of Barbara Duprey. They are very close with their mother. Tina Duprey has lived with her mother her entire life, and the two shared everything with each other. She testified that she gave up dating years ago to better enjoy her relationship with her mom and strengthen their bond. Tina has devoted herself to her mother's care and has worked toward her mother's medical improvement throughout her hospital stay. She has spoken to her mother about her end-of-life goals many times. Her father died of an aneurism, and the family had extensive conversations about end of life wishes at that time. The Duprey children both agree that their mother wanted all possible medical support to extend her life as long as possible, regardless of the cost. It was clear to the Court that Tina Duprey would do anything to provide care for her mother.

The Temporary Guardian is Sarah Nussbaum. Ms. Nussbaum is the head of the Office of Public Guardian for the past two years and was a public guardian for years before that. She has handled other guardianships that addressed the issue of withdrawing medical intervention. Since she was appointed, Ms. Nussbaum has spoken with Barbara Duprey, her children, her doctors at the hospital, her nurses, and her primary care doctor. She reviewed medical records and prior family obituaries. She considered all information reasonably available to her before coming to the conclusion that it was in Barbara Duprey's best interests to remove the ventilator and change the goals of care to comfort.

The information she relied on included statements from nurses that on one occasion Barbara Duprey tried to pull her ventilator out when Tina Duprey left the room. She stated numerous times that she wanted to die, and repeated requests for help from nursing staff and the guardian herself. Barbara Duprey would not express these feelings in front of Tina or David Duprey.

There is no valid advanced health directive signed by Ms. Duprey. Tina Duprey testified at the hearing before the Probate Division that she had just found a document that expressed her mother's wishes dated from 2014. This was written by her mother and signed after her father died. It expressed a desire to receive "all life saving measures" including a ventilator. Medical Directive, January 21, 2024 (filed as AHCD in 26-PR-04020 on 9/2/2026) (emphasis in original). Appellants did not present this as a valid health care directive because it was not properly witnessed.

While the Probate Division rejected the validity of this document, for purposes of today's hearing, the Court considered it to be a written expression of Barbara Duprey's wishes under section 3075(f)(1). The Guardian reviewed the document before the hearing and testified credibly that it would not change her decision to remove life sustaining care for Barbara Duprey. This is because the wishes Barbara Duprey expressed twelve years ago and not while in the midst of a long-term hospital stay while intubated are informative, but not controlling. These feelings could have changed based on her current life reality and experiences. Based on all of the other information available to the Guardian she concluded that her feelings and desires did in fact change. The Court comes to the same conclusion.

There is no case law interpreting section 3075, but the plain language of the statute makes it clear that the guardian must receive permission from the Probate Division prior to withdrawing

life-sustaining measures and that she must consider the stated factors. The Court is directed to consider these same factors in arriving at its decision, which is in effect a de novo review of the Guardian's decision.

The Court found all of the parties in this case to be credible. The Court finds that Barbara Duprey was saying different things to her children than she was to the medical staff. Ms. Duprey had her reasons for not wanting to share with Tina and David Duprey that she was ready to die. All parties agreed that Ms. Duprey wanted to go home. That is no longer possible under any circumstance, but it was previously not possible without removing the ventilator, which Tina Duprey would not authorize. Barbara Duprey's statements to nurses, the guardian, and doctors indicates that her true desires, expressed to those to whom she did not have a strong emotional bond, were to no longer be in pain and to die comfortably. The Guardian considered and relied on those statements from the medical staff. The Court finds that the medical staff were motivated by providing care to Ms. Duprey and finds their testimony and statements to the Guardian to be credible.

The Guardian also spoke to the Dupreys and learned about their conversations with their mother and her expressed wish to stay alive. She learned that this was a strongly expressed desire and that the children also wanted their mother to stay alive.

The Guardian concluded and the Court agrees that while those wishes accurately capture Ms. Duprey's views prior to her hospitalization, more recently, they were expressed by Barbara Duprey as an act of love to her children, not an expression of her true desire. The Court further concludes that it is in Barbara Duprey's best interests to remove the ventilator and change the goal of her care to comfort care.

The Court notes that while this document was not an advanced health directive as recognized by Chapter 231, subchapter 1 of Title 18, the Court considered that statutory scheme to understand the legislature's direction to Courts in considering a person's dying wishes. 18 V.S.A. § 9704 controls how a person can amend an advanced health directive. Subsection (b) allows a person without capacity to change their wishes under a validly executed advanced health directive by expressing those wishes to a medical professional. That is what happened here.

It is unlikely any Court could conclude that the Guardian did not properly rely on all information available to her in arriving at her decision and that Barbara Duprey's expression of her wishes twelve years ago would not have changed that decision. The Court finds after considering all of the evidence presented at both hearings, that Barbara Duprey wished to transition to comfort care and to pass away naturally. She no longer wished to be on a ventilator. The Court finds that Tina and David Duprey have a very low likelihood of succeeding on the merits of their claim.

The Court finds that although the harm to Barbara Duprey is somewhat reduced because as she advances in the dying process she expresses less pain, the balance is still equal. The Duprey children will be irreparably harmed by a loss of their mother they feel is premature, and

Ms. Duprey will be substantially and irreparably harmed by continuing to suffer and be delayed from dying naturally.

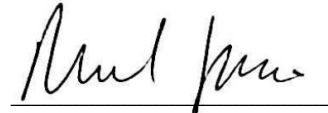
As a result, the factors the Court is required to consider favor a denial of a request for a stay.

ORDER

The Court has considered the four factors and concludes that a stay is not appropriate because Appellants are not likely to succeed on the merits. The request for the stay is denied.

The Court stays the effect of this order until 4:30pm. This Court will not further consider any request for a stay, and any further requests for a stay must be made immediately to the Supreme Court.

Electronically signed on September 4, 2026, pursuant to V.R.E.F. 9(d).

A handwritten signature in black ink, appearing to read "Navah C. Spero", is written over a horizontal line.

Navah C. Spero
Superior Court Judge