

WISCONSIN SUPREME COURT
TUESDAY, DECEMBER 4, 2012
10:45 a.m.

This is a certification from the Wisconsin Court of Appeals, District III (headquartered in Wausau). The Court of Appeals may certify cases that it believes cannot be resolved by applying current Wisconsin law. The Wisconsin Supreme Court, as the state's preeminent law-developing court, often accepts such certifications from the Court of Appeals. This case originated in Marathon County Circuit Court, Judge Vincent K. Howard, presiding.

2011AP1044-CR/2011AP1105-CR [State v. Neumann](#)

This certification involves consolidated appeals that raise issues related to statutory construction, constitutional rights and appropriate jury instructions for persons charged with reckless homicide based on their choice to rely on prayer rather than medical treatment for an ill child.

Some background: The defendants, Dale and Leilani Neumann, were the parents of 11-year-old Madeline Kara Neumann, who died from uncontrolled diabetes mellitus. Madeline had been showing symptoms of illness for approximately two weeks before her death on March 23, 2008.

The emergency room doctor who examined Madeline said hers was the most advanced case of juvenile diabetic ketoacidosis (DKA) he had ever seen. The doctors who testified at trial agreed that DKA is survivable, and the prognosis for a still breathing DKA patient with a heartbeat is very good. One doctor who testified at trial said he believed Madeline's DKA was treatable and that her chances of survival were high until well into the day of her death.

The Neumanns were both charged with second-degree reckless homicide, contrary to § 940.06(1), which provides: "whoever recklessly causes the death of another human being is guilty of a Class D felony." They claimed a statutory right under § 948.03(6), the child abuse statute, and a constitutional right to substitute prayer for medical treatment.

Two weeks before her death, Madeline began experiencing fatigue, thirst, and frequent urination. Three days before her death, she would have appeared generally healthy to a casual observer. On March 21, 2008, Mrs. Neumann noticed that Madeline was very tired, but no one believed she was suffering from a serious illness. On March 22, Madeline said she was feeling tired. Mrs. Neumann told her to stay home and rest rather than working at the family's coffee shop. When Mrs. Neumann returned from work, she noticed that Madeline's legs were skinny and blue. Mrs. Neumann massaged Madeline's legs, and the Neumanns prayed over her. Mrs. Neumann said she believed Madeline was under spiritual attack and that prayer was the only answer.

The family enlisted help from others to pray for Madeline. Dale Neumann broadcasted an e-mail seeking emergency prayer and assistance from a church elder. Neumann's father suggested using Pedialyte since Madeline seemed dehydrated, but Leilani Neumann said, "That could be taking the glory from God." The family believed Madeline's health had improved later that night because her breathing was easier and more regular and her hands were warmer. On the morning of March 23, Mrs. Neumann described Madeline's condition as comatose and hanging between life and death. At 1:30 p.m., Madeline's parents expressed optimism about her prognosis but an hour later she stopped breathing.

The defendants were convicted, following separate jury trials, of one count of second-degree reckless homicide. They were each sentenced to 10 years of probation, with six months in the county jail stayed. In addition, each parent was ordered to serve 30 days in jail during the month of March, every other year, for six years.

Both parents separately appealed, asking for review on several issues, including due process rights, jury instructions, effectiveness of counsel, and whether the statutory exemption for faith healing applies.

The Neumanns argue jury instructions negated the prayer treatment privilege granted by the child abuse statute and that the instructions violated their constitutional right to direct the medical care for their child. The state reiterates that the prayer exception is not applicable to the homicide statute and that the general right of parents to make decisions about their children's care does not prohibit the state from imposing a medical obligation on a parent necessary to preserve a child's life.

In certifying the case, the Court of Appeals asks the Supreme Court, in part, "to determine the scope of the prayer treatment exception and to inform trial courts regarding the appropriate jury instructions when that exception is raised in a reckless homicide case."