J.M., Applicant v. **The Board of Management of Saint Vincent's Hospital** and **Justin Geoghegan,** Respondents and **P.M.,** Notice Party [2002 No. 13684P]

High Court 24th October, 2002

Wards of court – Refusal of medical treatment – Lunacy – Right to self-determination – Urgent application – Patient in coma – Parens patriae jurisdiction – Wishes of husband – Whether court should uphold decision to refuse medical treatment – Whether court can rely on parens patriae jurisdiction – Lunacy Regulation (Ireland) Act 1871 (34 & 35 Vict., c. 22) – Constitution of Ireland 1937 Article 40.

Constitution – Personal rights – Right to life – Right to refuse medical treatment – Right to self-determination – Court's jurisdiction to intervene – Whether decision final and clear – Constitution of Ireland 1937 Article 40.3.

The notice party was critically ill and required immediate blood transfusions and a liver transplant to save her life. Her husband, the applicant, was a Jehovah's Witness and the notice party, who was African, had adopted her husband's religion upon their marriage. She had been studying to do so since March, 2002. During a lucid interval, the notice party discussed the matter of her treatment with the applicant and later, when not so clear of speech or mind, indicated to him her decision to accept the medical treatment. However, within a short period of time, she refused to sign the consent form and appeared to have changed her mind.

Held by the High Court (Finnegan P.), in admitting the notice party to wardship and directing the provision of medical treatment, 1, that, having regard to the circumstances of the case and, in particular, the delay which would be incurred by following the normal statutory route, the court could rely on its *parens patriae* jurisdiction in deciding whether or not to uphold a decision to refuse medical treatment.

In re D. [1987] I.R. 449 and *In re Birch* (1892) 29 L.R. Ir. 274 applied.

2. That, in exercising its jurisdiction to protect and vindicate the personal right of a ward of court to refuse medical treatment, the court should consider the right of the person to determine for herself provided she was competent to make such a decision.

In re a Ward of Court (withholding medical treatment) (No. 2) [1996] 2 I.R. 79 applied.

3. That the decision to refuse treatment was not a clear final decision as the notice party was pre-occupied with her husband and his religious beliefs rather than her own welfare and whether or not to have treatment. Her decision to refuse treatment stemmed from the notice party's cultural background and desire to please her husband and not to offend his sensibilities.

Cases mentioned in this report:-

In re Birch (1892) 29 L.R. Ir. 274.

In re D. [1987] I.R. 449; [1988] I.L.R.M. 251.

In re a Ward of Court (withholding medical treatment) (No. 2) [1996] 2 I.R. 79; [1995] 2 I.L.R.M. 401.

Plenary summons.

The facts have been summarised in the headnote and are fully set out in the judgment of Finnegan P., *infra*.

The application was heard on the 24th October, 2002. Due to the urgency of the application, the court allowed the applicant proceed on foot of a draft plenary summons and oral evidence on oath from the applicant and the second respondent. The plenary summons was then issued on the 25th October, 2002 and an affidavit was subsequently filed by the applicant on the 12th November, 2002 and by the second respondent on the 28th November, 2002.

*John M. Fitzgerald S.C. (*with him *Gráinne Lee)* for the applicant.

Andrew James Walker, solicitor, for the second respondent.

The first respondent and the notice party were not represented.

Ex tempore.

Finnegan P. 24th October, 2002

I propose dealing with the matter under the jurisdiction conferred on me in wardship matters. I propose taking the evidence on oath due to the urgency of the matter as establishing the following:-

The notice party is on medication and on a ventilator. The medical position is that she is in a coma. There may be some possibility of a regeneration. It is not the case however that the notice party has time to recover consciousness. Having said that, even if the notice party did recover consciousness, there is a serious doubt that she would be in a suitable condition to make a decision. As matters stand, as they come before me now, the notice party is not in a position to make a decision for herself. In such cases, I have a number of statutory powers. Section 103 of the Lunacy Regulation Act 1871 confers a statutory power upon me and it is encumbent upon me to comply with all of that section.

Having regard to the facts of the situation at hand, it is inappropriate that the delay that would be incurred if the section were to be complied

with should be incurred. There is serious doubt over the validity of orders made in the past without first going through the normal procedure as set out under the Act. As a result thereof, I must rely on my *parens patriae* jurisdiction. In so doing, I will rely on the Supreme Court case of *In re D.* [1987] I.R. 449, wherein at p. 454 it sets out the ample nature of that jurisdiction by affirming that said in the case of *In re Birch* (1892) 29 L.R. Ir. 274 at p. 275:-

> "The terms of the Queen's Letter in Lunacy expressly state the nature of the jurisdiction it confers. It commences:- 'Whereas it belongeth unto us in right of our royal prerogative to have the custody of idiots and lunatics and their estates in that part of the United Kingdom called Ireland … We therefore … have thought fit to entrust you with the care and commitment of the custody of the idiots and lunatics and their estates'. These words amount to an express delegation by the Crown under the Sign-manual of its prerogative jurisdiction in Lunacy to the Lord Chancellor. The single purpose of the Crown is to benefit this afflicted class by confiding them to the care of its highest Judge and one of its greatest officials. There is no restriction by which the jurisdiction of the Lord Chancellor is confined to any particular section of this afflicted class. The parental care of the Sovereign extends over all idiots and lunatics, whether so found by legal process or not. That high prerogative duty is delegated to the Lord Chancellor, and there is no statute which in the slightest degree lessens his duty or frees him from the responsibility of exercising that parental care and directing such inquiries and examinations as justice to the idiots and lunatics may require. The Queen puts the care and commitment of the custody of idiots and lunatics before the care of their estates, thus showing with unmistakable clearness that the first and highest care of the Lord Chancellor should be given to the personal treatment of this afflicted class."

These views are endorsed by me and the jurisdiction in this matter has not been circumscribed by the Lunacy Regulation Act 1871. This case sets out the powers that are available to bring certain persons within the power of the courts. I will rely on these passages to give me jurisdiction.

How and when to exercise jurisdiction is more clear cut where a minor rather than an adult is for consideration but the question which is before me concerns an adult who has given a refusal to the receipt of treatment.

I will have regard to the decision in *In re a Ward of Court (withholding medical treatment) (No. 2)* [1996] 2 I.R. 79. That matter was heard by Lynch J. in the High Court and came on appeal to the Supreme Court which set out the approach to be adopted by the courts in such cases. The approach to be adopted is that you have regard to the right of the person to

determine for themselves provided they are competent to make such a decision.

At p. 124 of the report, Hamilton C.J. stated:-

> "… As the process of dying is part, and an ultimate, inevitable consequence, of life, the right to life necessarily implies the right to have nature take its course and to die a natural death and, unless the individual concerned so wishes, not to have life artificially maintained by the provision of nourishment …"

That is not quite the position here but having regard to Hamilton C.J. said at p. 125 where he affirmed the statement by the then President of the High Court (Finlay P.) that the "… dignity and autonomy of the human person (as constitutionally predicated) require the State to recognise that decisions relating to life and death are, generally speaking, ones which a competent adult should be free to make without outside restraint, and that this freedom should be regarded as an aspect of the right to privacy which should be protected as a 'personal' right by Article 40.3.1°. But like other 'personal' rights identified by the Courts, the right is not an absolute one, and its exercise could in certain circumstances be validly restricted. For example, in the case of contagious diseases, the claims of the common good might well justify restrictions on the exercise of a constitutionally protected right to refuse medical treatment. But in the case of the terminally ill, it is very difficult to see what circumstances would justify the interference with a decision by a competent adult of the right to forego or discontinue life saving treatment".

Hamilton C.J. went on to say in the above-mentioned case that a competent adult who is terminally ill has the right to forego ongoing treatment.

The notice party here is terminally ill and it has fallen to me to decide if her decision to refuse treatment should be upheld having regard to her constitutional rights and also taking into account the following:-

1. The notice party is African. Part of her culture is that she adopts the religion of her husband upon marriage. The notice party did, in fact, following her marriage to the applicant, adopt his religion by studying to do so since March, 2002.
2. The evidence of the applicant involves discussions he had with the notice party on Saturday, the 19th October, 2002, wherein the applicant "spoke to her and told her that the decision was important and that she shouldn't feel obliged to refuse because of him as it was her decision". The notice party asked the applicant what he would do in her situation but the applicant left the decision to her. She thereafter said to the applicant that she would think about the decision to be made. The evidence is that the notice party was lucid at the time of this conversation.

3. The notice party did make a decision on Sunday, the 20th October, 2002, in circumstances causing concern. She was visibly weaker, she was not as clear in speech as before and was not as clear of mind. When the applicant spoke to the notice party she cried and said that she would take blood. The applicant communicated that to the liver transplant team. However, when a member of that team returned within ten minutes to have the consent form signed, the notice party had changed her mind again.

The evidence at this point is that a decision was made to refuse treatment and a decision was made to receive treatment and then the notice party refused to sign the consent form.

I take the view because of her cultural background and her desire to please her husband and not offend his sensibilities, the notice party elected to refuse treatment. I am of the view that the notice party did not make a clear final decision to have, or not to have the treatment. She was preoccupied with her husband and his religion as a Jehovahs Witness rather than with whether to have the treatment and her own welfare.

I am strongly of the opinion that if the notice party was now lucid and strong and aware of her husband's present decision, she would agree with a decision to have the treatment as she would have a desire to live, as has been seen. She would also be comforted by her husband's attitude to the decision.

Having satisfied myself that she made no final decision to refuse treatment it is up to me to under my *parens patriae* jurisdiction to make the decision for the notice party. She has a child and a loving husband. The medical evidence is that she has a 60% chance of survival. In those circumstances it is an easy decision.

[Reporter's note:- The court made an order admitting the notice party to wardship and directing the respondents to provide appropriate medical treatment, including a liver transplant and blood transfusion.]

Solicitor for the applicant: *Patricia Carroll.*

Solicitors for the respondent: *Hayes & Co.*

Siobhán Ní Chúlacháin, Barrister
