

Re B (Consent to Treatment: Capacity)

[2002] 1 FLR 1090

22/03/2002

Court

Family Division

Summary

Upholding Ms B's right to refuse treatment

Facts

The patient had a condition caused by malformation of blood vessels in the spinal cord. She executed a living will stating that if she were unable to give instructions she wished for treatment to be withdrawn if she was suffering from a life-threatening condition, permanent mental impairment or permanent unconsciousness. She eventually became tetraplegic, suddenly suffering complete paralysis from the neck down. When she began to experience respiratory problems, the intensive care team in the hospital treated her with a ventilator, upon which she is now dependent. The doctors considered that the terms of the living will were not specific enough to authorise withdrawal of the ventilation. She underwent surgery, which gave her some movement of the head, and the ability to articulate words. The patient then asked for the ventilator to be switched off. Two independent psychiatrists at first assessed her as having capacity, but then changed their minds and concluded that she did not have capacity. The patient participated in various rehabilitation assessments, and, in August 2001, was assessed as competent to make the decision to discontinue treatment. The hospital sought advice on the ethics of the situation. It eventually offered the patient a weaning programme, involving gradual reduction of ventilation, which the patient refused on the ground that it would be a prolonged and painful process. She also consistently refused rehabilitation. The patient brought proceedings, seeking a declaration that she had the mental capacity to choose whether to accept or refuse medical treatment in circumstances in which her refusal would almost inevitably lead to her death, a declaration that the hospital had been treating her unlawfully, and nominal damages to recognise the tort of trespass to the person.

Held

Held – granting the declarations sought and awarding damages in respect of trespass – a patient with capacity had the right to refuse medical treatment, even when that refusal would lead to his or her death. The patient, who had demonstrated a very high standard of mental competence, intelligence and ability was competent to make all relevant decisions about her medical treatment, including the decision whether to seek to withdraw from artificial ventilation. The patient had been cared for to the highest standards of medical competence and with devotion, however, the hospital trust should have taken steps to resolve the ethical issue, and its failure to do so justified a small award of damages to the patient to reflect the fact that she had been treated unlawfully since August 2001. It would be helpful to restate certain basic principles and offer some further guidelines. (a) There was a presumption that a patient had

mental capacity to consent to medical treatment. (b) When a patient with capacity refused treatment, the patient's decision had to be respected by doctors, and consideration that the best interests of the patient would indicate that the decision should be to consent to treatment were irrelevant. (c) Any concern about capacity should be resolved as soon as possible. (d) While any issue as to capacity was being resolved the patient must be cared for in accordance with the doctors' judgment as to the patient's best interests. (e) In assessing capacity it was most important that the question of mental capacity should not be confused with the nature of the decision made by the patient, however grave the consequences. The view of the patient might reflect a difference in values rather than an absence of competence. (f) In the rare case where disagreement still existed about competence it was of the utmost importance that the patient was fully informed of the steps being taken and made a part of the process. (g) If the hospital was faced with a dilemma that the doctors did not know how to resolve, that must be recognised, and further steps taken as a matter of priority. (h) If there was no disagreement about competence but the doctors were for any reason unable to carry out the patient's wishes, their duty was to find other doctors who would do so. (i) If all appropriate steps to seek independent assistance from medical experts outside the hospital had failed, the hospital trust should not hesitate to make an application to the High Court or seek the advice of the Official Solicitor. (j) The treating clinicians and the hospital should always have in mind that a seriously disabled patient who was mentally competent had the same right to personal autonomy and to make decisions as any other person with mental capacity.

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