

Re AK (Medical Treatment: Consent)

[2001] 1 FLR 129

10/08/2000

Court

Family Division

Summary

Right of terminally disabled to refuse treatment

Facts

The patient, aged 19, suffered from motor neurone disease, a progressive, incurable and fatal condition. Before he had been conclusively diagnosed the patient had had a tracheostomy tube inserted, since which time he had been on a ventilator. Without the ventilator the patient would have died some months earlier. The patient's physical condition had gradually deteriorated; currently his only means of communicating was through movement of one eyelid, by which means he was able to answer 'yes' or 'no' to questions. Using this laborious method of communication, the patient had asked that the doctors remove his ventilator 2 weeks after he lost his ability to communicate. He was aware that this would inevitably result in his death. The doctors treating him sought a declaration that it would be lawful to discontinue life-sustaining treatment in accordance with the patient's directive.

Held

Held – granting the declaration –

(1) In the case of an adult patient of full capacity his refusal to consent to treatment or care must in law be observed. Doctors are not entitled to treat if it is known that the patient, provided he was of sound mind and full capacity, has let it be known that he does not consent and that such treatment is against his wishes.

(2) To this extent an advance indication of the wishes of a patient of full capacity and sound mind is effective, but care must be taken to ensure that such anticipatory declarations of wishes still represent the wishes of the patient.

(3) The cessation of invasive ventilation by doctors does not amount in law to the taking of active steps to end life. On the contrary, the continuation of invasive ventilation without the consent of an adult patient of full capacity is not simply not the duty of the doctor but is positively unlawful.

(4) It is necessary to be satisfied that the patient is of full capacity and critically to examine the proposition that consent has been given, particularly where, as here, communication is so painfully difficult. The evidence showed that the patient was of full capacity and had clearly indicated his wishes.

(5) The law was clear and a declaration will not always be necessary. Here, the application had been properly made because the doctor had received conflicting legal advice about the position.

(6) Nothing in the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 pointed away from the conclusions reached above.

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