SMU | Dedman School of Law

SMU Law Review

Volume 25 | Issue 5 Article 5

1971

Can an Adult be Compelled to Submit to a Blood Transfusion against His Religious Beliefs - The Implications of John F. Kennedy Memorial Hospital v. Heston

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NOTES

Can an Adult Be Compelled To Submit to a Blood Transfusion Against His Religious Beliefs? The Implications of *John F. Kennedy Memorial Hospital v. Heston*

The defendant was severely injured in an automobile accident and was rushed to the plaintiff hospital. The attending physicians at the hospital determined that the defendant would die from a ruptured spleen unless an operation was performed, and even if operated upon, the defendant would die unless a blood transfusion was administered. The defendant and her parents were Jehovah's Witnesses and their religious belief forbade blood transfusions.[1] The defendant, an adult, later claimed that she refused a blood transfusion, but the attending physicians stated that in their opinion she was in shock and incoherent and incompetent to make a judgment. The defendant's mother strongly opposed the transfusion and signed a release that relieved the hospital of any liability for malpractice because of failure to administer proper treatment. A release was not signed by the defendant because of the seriousness of her condition. After notice to the mother the plaintiff hospital made application to a judge of the superior court for the appointment of a guardian who would have the authority to consent to a life-saving blood transfusion for the defendant.[2] At the hearing it was determined that no doctor could be found who would perform the operation without also administering a transfusion. The application was granted and a blood transfusion was administered. After recovering from her injury, the defendant moved to have the order of the superior court judge vacated, but the motion was denied. Despite the fact that the case was technically moot, the Supreme Court of New Jersey consented to hear it on the conviction that the public interest warranted a resolution of the controversy.[3] *Held, affirmed*: An adult may be compelled to submit to a blood transfusion, even though it is against his religious beliefs, when such treatment is necessary to prevent his death. *John F. Kennedy Memorial Hospital v. Heston*, 58 N.J. 576, 279 A.2d 690 (1971).

I. The Development of the Free Exercise of Religious Liberty

Religious liberty is guaranteed to the American people by the first amendment to the United States Constitution.[4] The United States Supreme Court has

[1] Jehovah's Witnesses base their belief on a biblical prohibition against eating blood. "By a perpetual law for your generation and all you habitations, neither blood nor fat shall you eat at all." *Leviticus* 3:17 (New World Translation of the Holy Scriptures). Also: "That you abstain . . . from blood." *Acts* 15:29 (New World Translation of the Holy Scriptures). *See also* Ford, *Refusal of Blood Transfusions by Jehovah's Witnesses*, 10 CATHOLIC LAWYER 212 (1964).

[2] N.J. REV. STAT. § 3A:22-1 (1953). This was an action by Kennedy Memorial Hospital, as plaintiff, against the patient, who was unconscious and who required a blood transfusion to prevent imminent death, and the patient's mother, who refused to consent to a transfusion because of religious beliefs.

[3] Other jurisdictions have held that the public interest may justify a refusal to dismiss an appeal as moot. *See* Annot., 132 A.L.R. 1185 (1941). *See generally* Note, *Cases Moot on Appeal: A Limit on the Judicial Power*, 103 U. PA. L. REV. 772 (1955); Note, *Emergency Writ Issued Authorizing Blood Transfusions Against Adult Patient's Will*, 39 N.Y.L. REV. 706 (1964).

[4] U.S. CONST. amend. I: "Congress shall make no laws respecting an establishment of

held, however, that this constitutional guarantee is limited in its scope. In the first case in which the Court addressed itself to the free exercise clause of the first amendment, the Court voiced the opinion that although the laws cannot interfere with mere religious beliefs and opinions, they may interfere with religious practices.[5] The state has an interest in preserving the general welfare of its people,[6] and an individual's religious liberty will be limited when his actions create a clear and present danger to this state interest.[7] Although this clear and present danger test has been frequently used in freedom of speech cases,[8] it has not emerged as the controlling test when applied to freedom of religion cases. In determining what circumstances justify state interference with religious practices, the approach of the Court has been to balance the individual's right to religious freedom against the conflicting interest of society.[9] As long as the individual does not interfere with the safety, morals, prosperity, or personal rights of others, his right to engage in practices in furtherance of his religious beliefs must be preserved.[10] If a state can accomplish its purpose by any means other than treading upon an individual's religious observances, it must seek such means.[11] The state must make special provisions to relieve religious liberty from restrictions imposed by generally legitimate governmental regulations.[12] There must be more than a rational relationship to some colorable state interest to justify a substantial infringement of religious liberty.[13] Governmental regulations compelling action contrary to an individual's conscience are considered serious interferences with religious liberty,[14] and courts have held that such interferences will not be tolerated unless there exists a compelling state interest.[15]

II. Free Exercise of Religious Liberty When Opposed by the State's Interest in Health

Compulsory medical treatment presents quite complex problems. It involves constitutional questions of freedom of religion and conscience of the patient on one hand, and the legal and ethical dilemma faced by the doctors and hospital

religion or prohibiting the free exercise thereof . . . ." This prohibition is applicable to the states via the fourteenth amendment. Cantwell v. Connecticut, 310 U.S. 296 (1940).

[5] Reynolds v. United States, 98 U.S. 145 (1878).

[6] McBride v. McCorkle, 44 N.J. Super. 468, 130 A.2d 881 (1957).

[7] Cantwell v. Connecticut, 310 U.S. 296, 303 (1940).

[8] *See, e.g.*, Whitney v. California, 274 U.S. 357, 372 (1927) (Brandeis, J., concurring); Schenck v. United States, 249 U.S. 47 (1919). *But see* Dennis v. United States, 341 U.S. 494, 542-43 (1951) (Frankfurter, J., concurring).

[9] *See* Antieau, *The Limitations of Religious Liberty*, 18 FORDHAM L. REV. 221, 224 (1949).

[10] Minersville School Dist. v. Gobitis, 310 U.S. 586 (1940).

[11] Braunfield v. Brown, 366 U.S. 599 (1961).

[12] Sherbert v. Verner, 374 U.S. 398 (1963).

[13] *Id.* at 406: "In this highly sensitive constitutional area only the gravest abuses, endangering paramount interests give occasion for permissible limitations." *See also In re* Jenison, 265 Minn. 96, 120 N.W.2d 515, *vacated*, 375 U.S. 14 (1963) (refusal to serve jury duty); Sherbert v. Verner, 374 U.S. 398 (1963) (denial of unemployment compensation benefits to individual who refused to work on Saturday, her Sabbath); West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624 (1943) (refusal to salute the American flag). In all of the above cases the religious beliefs prevailed.

[14] West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 626 (1943).

[15] State v. Yoder, 49 Wis. 2d 430, 182 N.W.2d 539 (1971).

plus the state's interest in the health of its citizens on the other hand.[16] As early as 1903 it had been held that a parent, because of his religious beliefs, could not refuse medical aid for his dying child.[17] When children are involved, the courts have had little reservation in concluding that a parent's constitutional freedom of religion must yield to the paramount interest of the state to act in order to protect the welfare of a child and his right to survive. Most courts base their authority to act on state juvenile statutes giving responsibility to the state as *parens patriae* to care for infants within its jurisdiction and to protect them from neglect and abuse.[18] Under such statutes courts have considered it neglect when a parent because of his religious convictions refuses to permit a blood transfusion necessary to save his child's life.[19] And, therefore, it would be proper to appoint a guardian and to award custody to him for the limited purpose of authorizing blood transfusions to save the life of a child.[20] As the United States Supreme Court announced in *Prince v. Massachusetts*: "Parents may be free to become martyrs themselves. But it does not follow they are free, in identical circumstances, to make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves."[21]

It has been suggested that an individual's liberty to control himself and his life encompasses the right to take his own life.[22] Therefore, in those states in which attempted suicide is lawful, the refusal of necessary medical attention because of religious beliefs, whether equal to or less than attempted suicide, must be considered lawful.[23] Likewise, in those states in which attempted suicide is recognized as a crime, when death is imminent a person may not be allowed to refuse medical assistance because of religious beliefs.[24] But even in states recognizing the individual's right to take his own life, the desire to end one's life based upon his religious convictions must be sincere. This desire must be a religiously commanded goal, and not just an unwarranted side effect of a religious scruple.[25] Thus, when an adult refuses to approve a blood transfusion, but qualifies the refusal by saying that he will in no way resist a court order permitting such a medical procedure, it may be inferred that the individual does not sincerely wish to take his life, but rather he wishes to have his con-

[16] Leary v. United States, 383 F.2d 851 (5th Cir. 1967), *rev'd on other grounds*, 395 U.S. 6 (1969). *Contra*, Prince v. Massachusetts, 321 U.S. 158 (1944); Jacobson v. Massachusetts, 197 U.S. 11 (1905) (protection of society from contagious diseases); Davis v. Beason, 133 U.S. 333 (1890) (preservation of community morality); People v. Woody, 61 Cal. 2d 716, 394 P.2d 813, 40 Cal. Rptr. 69 (1964) (use of drugs in furtherance of religious beliefs); People v. Pierson, 176 N.Y. 201, 68 N.E. 243 (1903); Owens v. State, 60 Okla. 110, 116 P. 345 (1911) (medical aid to a dying child); Harden v. State, 188 Tenn. 17, 216 S.W.2d 708 (1948) (use of poisonous snakes in religious ceremonies).

[17] People v. Pierson, 176 N.Y. 201, 68 N.E. 243 (1903).

[18] In New Jersey the pertinent juvenile statutes are N.J. REV. STAT. § 9:2-9 (1960) and *id.* § 2A:4-2 (1952).

[19] Wallace v. Labrenz, 411 Ill. 618, 104 N.E.2d 769 (1952).

[20] State v. Perricone, 37 N.J. 463, 181 A.2d 751 (1962).

[21] 321 U.S. 158, 170 (1944).

[22] Application of President and Directors of Georgetown College, 331 F.2d 1000, 1008 (D.C. Cir.), *cert. denied*, 377 U.S. 978 (1964).

[23] Cawley, *Criminal Liability in Faith Healing*, 39 MINN. L. REV. 48 (1954).

[24] Application of President and Directors of Georgetown College, 331 F.2d 1000, 1008 (D.C. Cir.), *cert. denied*, 377 U.S. 978 (1964).

[25] *Id.* at 1009.

science cleared of any moral responsibility. In such cases a court order granting a blood transfusion has been issued.[26]

There is authority, however, that a court does not have the power to order compulsory medical treatment to a fully competent adult when there is no danger to public health, welfare, or morals.[27] Thus, when a competent adult persistently refused to consent to a blood transfusion to save her life because of her religious convictions as a Jehovah's Witness, knowing the consequences, and having released the hospital and its doctors from any civil liability, the court had no power to compel submission. In such a case there is no overriding societal interest. Despite the fact that the individual's religious beliefs are considered by others to be foolish, unwise, or ridiculous, the court can neither make a decision about what it thinks is best for the individual nor compel him to act in a certain way when his conscience and religious convictions tell him otherwise.[28]

There are situations in which state interference is justified. If the adult is incompetent, he is not in a mental condition to make any decision or to know the consequences of his decision, and state interference may be justified.[29] His capacity to make a rational decision in such circumstances is no greater than that of a child. In such instances the courts have assumed the responsibility of guardianship for the adult, at least to the extent of authorizing treatment to save his life.[30] And, similarly, if a parent has no power to refuse action to save his child's life, the husband has no power to refuse action to save his wife's life.[31] Another consideration that has been accorded considerable weight by the courts is whether the adult refusing treatment has any dependent minor children who might become wards of the state if the parent should die. As *parens patriae* the state has a right to protect a child from neglect during his minority. Such protection includes forbidding parents to abandon their children. Thus, refusal on the part of the parent to submit to medical treatment to save his life may constitute abandonment. Therefore, in such situations orders for compulsory medical treatment have been granted despite contrary religious views held by the adult.[32]

The New Jersey Supreme Court has held that the state's status as *parens patriae* extends to an unborn child. The court based the holding upon the proposition that before birth the infant is a distinct entity, and, as such, the law recognizes that rights he will enjoy when born can be violated before his birth.[33] In *Raliegh Fitkin-Paul Morgan Memorial Hospital v. Anderson*,[34] in

[26] *Id.*; United States v. George, 239 F. Supp. 752 (D. Conn. 1965).
[27] *In re* Brooks' Estate, 32 Ill. 2d 361, 205 N.E.2d 435 (1965); Erickson v. Dilgard, 44 Misc. 2d 27, 252 N.Y.S.2d 705 (Sup. Ct. 1962).
[28] 205 N.E.2d at 442; Valent v. New Jersey State Bd. of Educ., 114 N.J. Super. 63, 274 A.2d 832 (1971).
[29] First Christian Church v. McReynolds, 194 Ore. 68, 241 P.2d 135 (1952); White v. White, 108 Tex. 570, 196 S.W. 508 (1917).
[30] Application of President and Directors of Georgetown College, 331 F.2d 1000, 1008 (D.C. Cir.), *cert. denied*, 377 U.S. 978 (1964); Collins v. Davis, 44 Misc. 2d 622, 254 N.Y.S.2d 666 (1964).
[31] 331 F.2d at 1008.
[32] *Id.*; United States v. George, 239 F. Supp. 752 (D. Conn. 1965); Powell v. Columbian Presbyterian Hosp., 49 Misc. 2d 215, 267 N.Y.S.2d 450 (1965).
[33] Hoener v. Bertinato, 67 N.J. Super. 517, 171 A.2d 140 (1961).
[34] 42 N.J. 421, 201 A.2d 537, *cert. denied*, 377 U.S. 985 (1964).

which a mother refused on religious grounds to consent to a blood transfusion necessary to save her life as well as that of the child she was bearing, the court held that a transfusion could be ordered. The court had no problem reaching this decision with respect to the unborn infant. But the court refused to pass upon the question of whether it was justified in compelling the adult to act against her religious beliefs in order to save her life. The court concluded that the welfare of the child was so intertwined with that of its mother that it was not then necessary to make a distinction, and that granting an order requiring a blood transfusion to save the lives of both the mother and the child was warranted. The court reserved the question of whether there is judicial power to order compulsory medical treatment regardless of an adult patient's objection in the absence of any special circumstances.[35]

III. JOHN F. KENNEDY MEMORIAL HOSPITAL V. HESTON

In *John F. Kennedy Memorial Hospital v. Heston*[36] the New Jersey Supreme Court held that an adult may be compelled to submit to a blood transfusion, even though it is against his religious beliefs, when such treatment is necessary to prevent his death. The court in reaching its decision pointed out that the important question posed by the case was whether the state should be allowed to compel an adult to submit to treatment essential to save his life.[37] The court then proceeded to answer this question in favor of the state, basing its conclusion upon two considerations. The first consideration was the state's interest in sustaining the life of its people. The second consideration was the interest of a hospital and its staff in maintaining a high professional standard consistent with the principles of their profession.

The court refused to accept the idea that an individual's liberty includes the right to take his own life. The court pointed out that state interference is allowed to prevent suicides because the state has an interest in preserving the life and health of its people. Rejecting the argument that there is a difference between actively seeking death and passively submitting to it, the court, by analogy, reasoned that if a state may interfere to prevent a suicide, then it may interfere to compel a patient to submit to life-saving medical treatment. The court concluded that unless the medical treatment itself involved substantial risk to the patient, the state's interest in sustaining life in such circumstances was no different than its interest in preventing suicide. Furthermore, the court said that even if the patient's refusal to submit to the necessary treatment were based on religious convictions, the state would still be justified in interfering. Basing this opinion upon *Reynolds v. United States*,[38] the court observed that an individual's religious beliefs may be absolute and free from governmental regulation, but practices in furtherance of such beliefs are not absolute and must be balanced with the state's interest. When the state's interest in sustaining

[35] *Id.* at 538.

[36] 58 N.J. 576, 279 A.2d 670 (1971).

[37] *See* Note, *Constitutional Law—Religion—Court Authorization of Blood Transfusion to Patient Whose Religious Beliefs Prohibit the Acceptance of Blood Violates his Freedom of Religion*, 44 TEXAS L. REV. 190 (1965).

[38] 98 U.S. 145 (1878).

life is involved, governmental restraint on religious practices would be justified.[39]

The interest of the state in the preservation of life was not the only basis for the court's decision. Also considered by the court was the plight of the hospital and its staff when faced with such a situation. The court noted that the medical profession is dedicated to the preservation of life. Failure on their part to do everything possible to save a life would amount to malpractice. Accordingly, the court concluded that a hospital and its staff should not be burdened with the problems of deciding the sincerity of the patient's desire to die or the patient's competency to make such a decision. Nor should they be required to decide whether the release tendered by the patient or a member of his family would protect them from civil liability. In these situations in which the hospital is involuntarily entrusted with such problems the court found that the burden should be shifted to a judicial body. If time permits, application to a court should be made. And, if the court finds that a transfusion is necessary to save the life of the patient, the hospital and its staff will be permitted to administer the transfusion. The court concluded: "The solution sides with life, the conservation of which is, we think, a matter of state interest."[40]

The court expressed its holding in a very limited manner by saying that under the particular circumstances of the case a blood transfusion was warranted. However, it appears that the effect of the decision will be to permit hospitals to administer compulsory medical treatment to a patient if there is no risk of death from the treatment itself and if death is imminent, regardless of the patient's religious beliefs. To do otherwise, according to the court, would be contrary to the interest of the state in the preservation of life and would require doctors to shun their professional standards. However, the court qualified its holding by requiring that application be made to a court for the appointment of a guardian for the patient *if time permits.* Such a qualification leaves open the question of what a doctor should do when there is no time to go through such a procedure. The language in the case seems to indicate that in such a situation the doctor would be justified in administering the treatment without court approval.

The social desirability of the court's objective cannot be questioned. But in reaching its decision, the court failed to deal with the issue of why there was such a compelling state interest in preserving life that the individual's constitutional freedom of religious liberty could be overriden. In past cases state interests have justified interference when the patient was incompetent to make rational decisions about medical treatment or when he had a minor dependent child who would become a ward of the state. Other cases have refused to allow state interference when neither of these two circumstancs were present. In such cases the courts have held that it was improper for them to attempt to decide what course of action was best for the individual.[41] It is unclear whether the court in *Kennedy Hospital* considered these circumstances in finding a compel-

[39] *Id.* at 167.
[40] 279 A.2d at 673.
[41] *In re* Brooks' Estate, 32 Ill. 2d 361, 205 N.E.2d 435, 442 (1965).