

1995-96

NATIONAL HEALTH LAW
MOOT COURT COMPETITION

TRANSCRIPT OF RECORD

Docket No. 95-3045

SUPREME COURT OF THE UNITED STATES

October Term, 1995

WORLDWIDE HEALTH, INCORPORATED,

Petitioner,

v.

KATHERINE WEBSTER HAMMOND

Respondent.

SPONSORS:

Southern Illinois University School of Law

Southern Illinois University School of Medicine,
Department of Medical Humanities

American College of Legal Medicine

**IN THE UNITED STATES COURT OF APPEALS
FOR THE TWELFTH CIRCUIT**

No. 94-4529

JENNIFER C.,

Plaintiff-Appellant,

v.

**JEFFERSON COUNTY HOSPITAL and
THE ATTORNEY GENERAL
OF THE STATE OF PACIFICA,**

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Pacifica
Civil No. 94-2100 -- **John K. Smith**, *District Judge*

Argued April 26, 1994 -- Decided June 30, 1994

Before HARMON, *Chief Judge*, KELLER and FOSTER, *Circuit Judges*.

HARMON, *Chief Judge*. This case comes before the court on appeal from the district court's order requiring a sixteen-year-old pregnant female to undergo a cesarean section in order to save lives of both the mother and her unborn child. Because we find that this particular plaintiff has not met her burden of proving that she is mature enough to make her own medical decisions, we affirm the district court's judgment.

I. BACKGROUND

The plaintiff-appellant, Jennifer C., brought a declaratory judgment action in which she sought a declaration of her rights to refuse to undergo a cesarean section as suggested by her physicians. The case was tried by the district court on stipulated facts, which are set forth in full in the district court's opinion attached as an appendix to this decision.

For purposes of our discussion, the case can be briefly summarized as follows: Jennifer is a sixteen-year-old female who was approximately 37 weeks pregnant at the time of filing this action. Her physicians had discovered that Jennifer's pregnancy was complicated by a severe case of placenta previa, in which the placenta completely blocks the birth canal. They stated that unless she gave birth by cesarean section, there was a 99 percent chance that her

baby would die and "somewhere around a 50 percent chance" that Jennifer also would not survive the birthing process.

Jennifer's mother wanted her to have the delivery by cesarean section and had signed papers approving the operation. However, Jennifer objected to the procedure because of a severe distrust of physicians and an overwhelming fear of invasive medical procedures. These strong feelings, according to the district court, were generated in part by her experiences as a nurse's aide in a nursing home and by the death of a close friend, allegedly caused by improper medical care. Based upon her own personal religious beliefs, she stated that she was convinced that God would protect her from any danger and would ensure the safe delivery of her baby through natural childbirth. Jennifer further asserted that she was a mature minor who was entitled to make decisions about her own life and health and any risks to her. Jennifer's father took a neutral position, stating that in the interest of family harmony, he would go along with whatever the courts decided.

The district court found that these facts posed an extremely close question as to whether Jennifer qualifies as a mature minor who is legally competent to refuse medical treatment. However, the trial judge did not fully resolve this issue because he determined that even if Jennifer was competent to make this decision, she could not refuse to undergo the procedure under the facts of this case. Jennifer appealed the district court's ruling.

We heard argument in the case on April 26, 1994, and issued an oral ruling from the bench affirming the district court's order with a written decision to follow. In the interim, we were informed that the plaintiff acquiesced to the district court's order and submitted to the cesarean section on May 2, 1994, giving birth to a healthy baby boy. Although there is no longer an actual controversy, we issue the following decision to clarify our position and to aid courts that are likely to face this issue in the future.

II. DISCUSSION

The law has long recognized a patient's right to accept or forego recommended medical treatment. The doctrine of informed consent, which is rooted in the concept of bodily integrity, is firmly entrenched in American common law. See *Union Pac. Ry. v. Botsford*, 141 U.S. 250, 251 (1891) ("No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from restraint or interference of others, unless by clear and unquestionable authority of law."). As Justice Cardozo explained the doctrine: "Every human being of adult years and sound mind has a right to determine what shall be done with his own body; and a surgeon who performs an operation without his patient's consent commits an assault, for which he is liable in damages." *Schloendorff v. Society of New York Hospital*, 211 N.Y. 125, 129-30, 105 N.E. 92, 93 (1914).

More recently, the Supreme Court has stated that the corollary of this doctrine -- i.e., the right to refuse unwanted medical treatment -- is a liberty interest protected under the

Fourteenth Amendment. *Cruzan v. Director, Missouri Dep't of Health*, 497 U.S. 261 (1990). Thus, a patient's right of bodily integrity has constitutional underpinnings as well.

This case raises two difficult issues relating to this right: (1) whether a sixteen-year-old female is legally competent to exercise this right; and (2) whether the State has an overriding interest that would preclude a competent female from refusing a medical procedure that is necessary to save her life as well as that of the fetus she is carrying. The district court's decision turned upon the second issue. Therefore, we will focus our attention on it first.

A. The Right to Refuse a Cesarean Section

Although the Supreme Court has recognized a constitutional liberty interest in the right to refuse unwanted medical treatment, this right is not absolute. *Cruzan*, 497 U.S. at 279. "[W]hether [an individual's] rights have been violated must be determined by balancing his liberty interests against the relevant state interests." *Id.* (quoting *Youngberg v. Romeo*, 457 U.S. 307, 321 (1982)) (internal quotations omitted). Courts generally consider four state interests in determining whether to override a patient's medical treatment decision: the preservation of life, the prevention of suicide, the protection of third parties, and the ethical integrity of the medical profession. *Doe v. Doe*, ___ Ill. App. 3d ___, 632 N.E.2d 326, 334 (1st Dist. 1994).

The first two factors are not dispositive in the case at bar because there is no clear showing that Jennifer would die if she refused the operation. Rather, her physicians predict that her chances of dying are "somewhere around" 50 percent. Moreover, there are recognized risks of morbidity and mortality in connection with the surgery. In the absence of evidence showing that Jennifer's decision would more than likely lead to her death, we find that the state's interest in the preservation of life and the prevention of suicide are not sufficient to override her personal decision to forego the operation.

Some courts have found that the state's interest in protecting third parties extends to a pregnant woman's fetus. *See, e.g., Jefferson v. Griffin Spalding County Hosp. Auth.*, 247 Ga. 86, 274 S.E.2d 457 (1981). However, the more recent cases have held that the state's interest in protecting the fetus cannot override the mother's refusal to undergo a cesarean. *See Doe*, ___ Ill. App. 3d at ___, 632 N.E.2d at 334; *In re A.C.*, 573 A.2d 1235 (D.C. Ct. App. 1990). These later decisions, which we find to be more thoroughly analyzed, have held that "a woman's competent choice to refuse medical treatment as invasive as a cesarean section during pregnancy must be honored, even in circumstances where the choice may be harmful to her fetus." *Doe*, ___ Ill. App. 3d at ___, 632 N.E.2d at 326; *see also In re A.C.*, 573 A.2d at 1252 ("[I]n virtually all cases the decision of the patient . . . will control. We do not quite foreclose the possibility that a conflicting state interest may be so compelling that the patient's wishes must yield, but we anticipate that such cases will be extremely rare and truly exceptional."). Persuaded by the analysis of these cases, we find that a state cannot require a pregnant woman to undergo a cesarean solely for the benefit of her unborn child.

The final state interest cuts in favor of the plaintiff and against the state. As evident from a position taken by the American Medical Association's Board of Trustees, the medical profession strongly supports a pregnant woman's autonomy in making medical decisions. See *Legal Interventions During Pregnancy: Court Ordered Medical Treatments and Legal Penalties for Potentially Harmful Behavior by Pregnant Women*, 264 JAMA 2663, 2679 (1990). Moreover, the concept of court-ordered cesareans puts physicians in an untenable position vis-a-vis their patients.

Enforcement could be accomplished only through physical force or its equivalent. [The patient] would have to be fastened with restraints to the operating table, or perhaps rendered unconscious by forcibly injecting her with an anesthetic, and then subjected to unwanted major surgery. Such actions would surely give one pause in a civilized society, especially when [the patient] had done no wrong.

In re A.C., 573 A.2d at 1244 n.8.

Based upon this analysis, we find that the state's interests do not outweigh a competent woman's liberty interest in refusing a highly invasive cesarean section under the facts of this case. Therefore, we must determine whether the plaintiff has shown that she is legally competent to make such a decision on her own behalf.

B. The Mature Minor Doctrine

Under the general common law rule, parental consent is required before medical treatment may be performed upon a minor. However, the states have recognized certain exceptions to this general rule, such as allowing minors to receive medical care without parental consent in emergency situations. Another exception is the one proffered by the plaintiff-appellant in this case: the mature minor doctrine.

We have been unable to find any published decisions that have rejected the mature minor rule. Therefore, we believe that the State of Pacifica, as a common law state, would also recognize this exception. More significantly, we agree with the plaintiff that the Supreme Court has embraced the rule as a constitutional doctrine. See *Bellotti v. Baird*, 443 U.S. 622 (1979) (holding parental consent requirement in state abortion statute unconstitutional unless the statute provides a bypass procedure in which a minor can demonstrate that she is mature enough to make her own decision).

The mature minor doctrine provides that minors who can understand the nature and consequences of the medical treatment being offered to them are considered mature enough to consent to or refuse such treatment without parental intervention. See *In re E.G.*, 133 Ill. 2d 98, 549 N.E.2d 322 (1989). The states do not all agree on what an individual must prove in order to qualify as a mature minor. However, the courts appear to agree that at a minimum, the minor must show (1) an ability to appreciate the nature, extent, and probable consequences

of the decision; and (2) that he or she is mature enough to exercise the judgment of an adult. *Id.* at 111, 549 N.E.2d at 327-28.

The states also have not reached a clear consensus as to the quantum of proof that a plaintiff must provide in order to prevail as a mature minor. Because of the seriousness of the medical decision at issue in this case, we find that the State of Pacifica would adopt a clear and convincing evidence test, as Illinois has done. *See E.G.*, 133 Ill. 2d at 110, 549 N.E.2d at 327. Based upon the district court's discussion of the evidence in this case, it is clear that the plaintiff has fallen far short of this standard. To the contrary, the district court finds this to be "a close question" with "serious questions" as to whether the plaintiff has demonstrated the responsibility and judgment of an adult.

The plaintiff's case would fail even if we were to apply a preponderance of the evidence test. Like the district court, we concede that the plaintiff has displayed certain signs of general intelligence and appears to understand the nature of the treatment involved in a cesarean delivery. However, her reasons for objecting to the procedure suggest that she does not fully understand the ramifications of her decision and is not exercising the judgment and wisdom of an adult. To the contrary, we find it doubtful that any competent adult would take a 50-50 chance of dying rather than submit to an operation because of a unsubstantiated distrust of physicians or fear of invasive medical procedures. Even the expressed concern regarding risks of morbidity and mortality that attend a cesarean section do not sway our views in this regard.

The plaintiff also relies on her own personal religious beliefs, stating that she is convinced that God will ensure the safe delivery of her baby through natural childbirth. However, there has been no showing that her belief is rooted in any established religion or other religious teachings. Without a sound basis for this belief, we are reluctant to find that the plaintiff has made a well-reasoned, adult judgment. Accordingly, we find as a matter of law that the plaintiff's evidence is insufficient to surpass even the preponderance of the evidence test.

III. CONCLUSION

Because the plaintiff has failed to prove that she is of sufficient maturity to make medical decisions for herself -- particularly a decision as serious as whether to undergo a cesarean section that is deemed necessary for her own well-being as well as that of her baby -- the district court's judgment ordering Jennifer to undergo a cesarean section is hereby **AFFIRMED**.

KELLER, Circuit Judge, concurring in part and dissenting in part. I completely agree with my brethren's conclusion that the state has not shown a compelling interest as required to override a competent woman's decision to refuse an unwanted cesarean section. However, with equal vigor, I disagree with the conclusion that this sixteen-year-old female is not competent to make her own medical decisions.

The majority asserts that the State of Pacifica would require a minor to prove his or her maturity under a clear and convincing standard. However, other states have adopted less stringent standards. In fact, Tennessee has adopted the Rule of Sevens for informed consent cases, holding that minors between the ages of fourteen and eighteen are entitled to a rebuttable presumption that they have the legal capacity to consent to a medical procedure. *Cardwell v. Bechtol*, 724 S.W.2d 739, 749 (Tenn. 1987) (further finding that for minors aged seven to fourteen, there is a rebuttable presumption that the minor lacks capacity to consent).

In short, it is not altogether clear which standard the State of Pacifica would adopt. Because the district court sits in the State of Pacifica and is much more familiar with the laws and trends in that state, I believe this question of law should be resolved by the district court in the first instance and not by this reviewing court. See Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice & Procedure* § 4507 (1982) (“As a general proposition, a federal court judge who sits in a particular state, especially one who has practiced before its courts, may be better able to resolve complex questions as to the law of that state than is a federal judge who has no such personal acquaintance with the law of the state.”).

I also disagree with the majority’s assessment of Jennifer’s reasons for objecting to the cesarean delivery. It is not patently unreasonable for a competent individual to eschew a physician’s recommendation and to take some risk if that individual has a profound fear of physicians and invasive medical procedures which themselves have attendant risks. We would not force an adult to undergo a procedure under these circumstances. Why, then, should we consider Jennifer’s objections to be immature and unsubstantiated simply because she has not yet reached the age of majority?

Similarly, her religious views are no less worthy of respect merely because she has not demonstrated that these beliefs are founded upon an established religion. In my view, this question is also one for the district court in the first instance because only that court is in a position to observe and examine the minor to determine whether she holds a well-reasoned and sincere religious belief.

The majority’s error is compounded by the fact that it presumes that Jennifer’s mother’s wishes would automatically prevail if the district court were to find that Jennifer did not qualify as a mature minor. To the contrary, I find it significant that Jennifer’s father does not necessarily concur in his wife’s opinion but, instead, believes that his daughter is fully competent to make this decision for herself. Under what authority would we require Jennifer to undergo the severe trauma of a cesarean section when both of her parents have not expressed unanimous agreement on the issue? Should we not instead appoint a guardian ad litem to determine what is in the minor’s best interests? Here again, this presents a novel question of state common law which I believe that the district court is better equipped to analyze in the first instance.

For all of these reasons, I would have remanded this case to allow the district court to make a definitive ruling regarding Jennifer's maturity and, if she lacks such maturity, to determine who should make this decision in her stead.

APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PACIFICA

JENNIFER C.,)
)
 Plaintiff,)
)
 v.) Civil No. 94-2100
)
 JEFFERSON COUNTY HOSPITAL)
 and THE ATTORNEY GENERAL)
 FOR STATE OF PACIFICA,)
)
 Defendants.)

MEMORANDUM OPINION AND ORDER

SMITH, District Judge.

This matter is before the Court on the plaintiff's Complaint for Declaratory Relief and Emergency Motion for a Preliminary Injunction. Because of the emergency nature of these proceedings, the Court ordered a speedy hearing of the action pursuant to Rules 57 and 65(a) of the Federal Rules of Civil Procedure.

I. FACTS

The case was called for hearing and presented to the Court on the following stipulated facts:

The plaintiff, Jennifer C., is a sixteen-year-old female who is approximately 37 weeks pregnant. She lives at home with her parents and two younger sisters. Although she has a part-time job as a nurse's aide at a convalescent home and earns about \$50 per week, her parents are her main means of financial support. Under Pacifica law, which puts the age of majority at age 18, Jennifer is considered an unemancipated minor.

Maintaining a B-average at New Hartford Community High School, Jennifer is vice president of the junior class and active in the girls' athletic programs. She has engaged in sexual intercourse on only a few occasions since becoming sexually active at age fifteen and has had only one sexual partner but

refuses to identify him. She did not use any form of contraceptive.

Jennifer learned she was pregnant through testing at a local family planning clinic. She declined to have an abortion and, instead, plans to place her baby for adoption. She has been receiving regular prenatal care through her obstetrician, Dr. Joseph Thornton.

During one of her most recent checkups, Dr. Thornton discovered that Jennifer's pregnancy was complicated by placenta previa, a condition in which the placenta blocks the birth canal. He referred her to a specialist, Dr. James Friedman, who confirmed the diagnosis. Both physicians agree that Jennifer's condition is an extreme case because the placenta is completely covering the internal opening of the cervix and, therefore, requires that she give birth by cesarean section. Without the procedure, the lives of both Jennifer and her child are at risk.

Jennifer's mother wants her to have the delivery by cesarean section and has signed papers approving the operation on behalf of her minor child. However, Jennifer has strenuously objected for the same reason that she declined to have an abortion: She has a severe distrust of physicians and an overwhelming fear of invasive medical procedures. Two years ago Jennifer's best friend died from complications following surgery necessitated by internal injuries sustained in a skiing accident. Attributing her friend's death to "botched" surgery, Jennifer has voiced a strong fear of any invasive medical procedures. Also, her work as a nurse's aide has engendered in Jennifer considerable discomfort with physicians. Based upon her own personal religious beliefs, she is convinced that God will protect her from any danger and ensure the safe delivery of her baby through natural childbirth. Jennifer has also claimed that, as a mature minor, she can make her own decisions about having a cesarean section, an invasive medical procedure that involves recognized risks. Therefore, although she has allowed her physician to monitor her pregnancy, she will not consent to surgical intervention of any sort.

The physicians confirm that Jennifer will have more pain from a cesarean delivery and could have complications, such as damage to other organs. They also state that the chances of a mother dying in a cesarean delivery are 1 in 10,000. This is significantly higher than the odds of dying in a normal, natural childbirth, which are generally about 1 in 20,000 or 1 in 50,000. However, because of the severity of Jennifer's condition, the physicians state that there is "somewhere around a 50 percent chance" that she will not survive natural childbirth and a 99 percent certainty that the fetus will die unless the delivery is by cesarean section. Drs. Thornton and Friedman have expressed

concerns about the emotional difficulty for any medical team performing a vaginal delivery under these extremely risky circumstances. They have stated that they doubt that any health care provider would willing take part in such a delivery. The physicians have explained these facts to Jennifer, but state that she is more concerned about the consequences of surgery than her chances of dying from natural childbirth complicated by her condition.

After learning that her mother had approved the operation, Jennifer immediately contacted the Pacifica Legal Services Foundation, which filed this declaratory judgment action on Jennifer's behalf. The action asks the Court to (1) declare that Jennifer is a "mature minor" who is able to make her own medical decisions; and (2) enjoin the hospital and the State from forcing her to undergo the surgery. The State has filed a counterclaim seeking a court order requiring Jennifer to undergo the procedure.

In order to preserve family harmony, Jennifer's father has taken a neutral position. Although he has stated that "if Jennifer was old enough to get herself pregnant, she's old enough to decide what to do about it," he also recognizes his wife's strong feelings on the subject. Therefore, he intends to go along with whatever the Court decides.

II. ANALYSIS

At issue in this case is whether a sixteen-year-old female can refuse a surgical procedure that is necessary both for her own life as well as that of her fetus. The dispute presents complex questions as to whether the plaintiff is legally competent to make serious medical decisions on her own behalf and whether the State may override the plaintiff's objections to this medical treatment.

The plaintiff's complaint alleges that her federal constitutional rights will be violated if the State, acting in concert with hospital officials, force her to undergo a cesarean section against her will. Because her claim arises under the United States Constitution, this Court has subject matter jurisdiction under 28 U.S.C. § 1331. The defendants have further stipulated to venue and the Court's personal jurisdiction over them.

A. A Minor's Right to Make Medical Decisions

Unlike many other states, Pacifica does not have any statutes that provide for the emancipation of minors or that would allow minors to consent to their own health care under special circumstances such as when married, pregnant, the victim

of a sexual assault or in need of emergency medical treatment. The plaintiff, however, argues that she is a mature minor and, therefore, has the right to consent to or refuse medical treatment under the common law, see e.g. *In re E.G.*, 133 Ill. 2d 98, 549 N.E.2d 322 (1989), and under the federal constitution. See *Bellotti v. Baird*, 443 U.S. 622 (1979) (adopting a "mature minor" doctrine under which women under the age of majority may undergo abortions without parental consent).

Assuming that this right exists, the Court finds that the facts of this case present an extremely close question as to whether Jennifer qualifies as a mature minor. The state courts have promulgated various tests to make this determination. However, at the very least, the minor must show that she "is mature enough to appreciate the consequences of her actions, and . . . is mature enough to exercise the judgment of an adult" *E.G.*, 133 Ill. 2d at 111, 549 N.E.2d at 327-28.

Jennifer is clearly of above-average intelligence and appears to understand the nature of her condition and the consequences of refusing to have a cesarean delivery. But based upon the circumstances resulting in her pregnancy and her unsubstantiated reasons for refusing to undergo the cesarean section, the Court has serious questions as to whether she has demonstrated the responsibility and judgment of an adult. The Court need not resolve this issue, however, because even if Jennifer were mature enough to make informed medical decisions, the Court finds that she cannot refuse to undergo the surgery under the facts of this case.

B. The Right to Refuse a Cesarean Section

Relying on the United States Supreme Court's decision in *Cruzan v. Director, Missouri Dep't of Health*, 497 U.S. 261 (1990), the plaintiff argues that she has a constitutional right to refuse unwanted medical treatment, which would include the right to refuse a cesarean section. The defendants contend that the plaintiff's rights are not absolute, but instead must be balanced against the state's overriding interest in preserving the lives of both Jennifer and her viable fetus.

Several courts have wrestled with the complex legal questions presented by this dispute and, in the interest of brevity, their analyses will not be repeated here. The bottom line is that the most recent of those decisions have concluded that a competent adult woman may refuse to undergo a cesarean section where the procedure is deemed necessary only to save the life of her unborn child. *In re Baby Boy Doe v. Doe*, ___ Ill. App. 3d ___, 632 N.E.2d 326 (1st Dist. 1994); *In re A.C.*, 573 A.2d 1235 (D.C. Ct. App. 1990).

No. 93-6721
IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1993

JENNIFER C.,

Petitioner,

v.

JEFFERSON COUNTY HOSPITAL and THE ATTORNEY GENERAL
OF THE STATE OF PACIFICA,

Respondents.

On Writ of Certiorari to the
United States Court of Appeals for the Twelfth Circuit

ORDER GRANTING CERTIORARI

Upon consideration of the Petition for Certiorari and respondents' Cross-Petition for Certiorari, the Court hereby **GRANTS** such petitions on the following issues:

1. Whether a competent female may refuse to undergo a cesarean section prescribed by her physicians, thereby increasing her own risk of death from natural childbirth and creating a 99 percent chance of death for her fetus.

2. Whether the sixteen-year-old plaintiff has proved that she is a mature minor and, therefore, legally competent to make a medical decision of this magnitude on her own behalf.

IT IS SO ORDERED.

Date: July 14, 1994.