Quadriplegic *'entitled'* to die

Re JS [2014] NSWSC 302

By Gayann Walker

On 4 March 2014, the NSW Court of Appeal made orders allowing the plaintiff hospital to end life-sustaining treatment on the request of the defendant, JS. It was necessary for the plaintiff to obtain these orders to avoid liability for the death that would be imminent as a result of removing the defendant's life-sustaining ventilation.

The health of JS, a 27-year-old C2-3 quadriplegic since the age of 7, had seriously deteriorated. In March 2013, he was hospitalised with pneumonia and the total collapse of his left lung. After this hospitalisation, he made attempts to live back in the community with his home care, but this was not possible. His doctor told the Court that the defendant experienced 'an escalating combination of chronic medical conditions' including autonomic dysreflexia, a likelihood of acute respiratory failure and increased frequency of recurring urinary infections and kidney stones; all of which meant he had to live in hospital.

JS began discussing the inevitable decline in his quality of life with his family, friends and treating practitioners. The Court's decision provided quotes from letters he had written, including the clear expression of his wishes that 'the life-sustaining mechanical ventilation which has kept me alive for the last 19 years be ceased soon at an agreed time and place. Please give me the control over the care that I receive that every other patient is afforded, and I know is my right.' The Court agreed.

Darke J acknowledged the tension between the right of the individual to decide for themselves what treatment he or she deems appropriate, even if that is the withdrawal of treatment, and the obligation of the state to protect the well-being of its citizens. Darke J advised that the issue to decide was whether the person making the request for the withdrawal of treatment 'suffers from some impairment or disturbance of mental functioning so as to render him or her incapable of making the decision'. The requestor must be able to 'comprehend and retain the information which is material to the decision', particularly the consequences of the decision, and be capable of using this information as the basis for his or her decision.

Darke J relied upon the reasoning of McDougall J in the previous NSW case of *Hunter and New England Area Health Service v A*[1] and the Western Australian case of *Bridgewater Care Group (Inc) v Rossiter*.[2] Based on these decisions, there is a rebuttable presumption that in the context of having made an informed decision to refuse life-sustaining treatment, a person of sound mind can opt to do so and the care-provider, to avoid 'what would otherwise be a battery', can bring proceedings for orders to carry out the patient's wishes.[3]

Darke J methodically analysed the evidence before the court, which included:

- six medical reports;
- the affidavit of the solicitor representing the plaintiff; and
- the affidavit of the solicitor assisting the defendant.

The medical reports set out the details of the defendant's condition chronologically and, more specifically, the complications that the defendant had experienced over the previous year. While Darke J did not detail the evidence in the report, he noted that there was no doubt that the defendant was capable of making the decision.

The Court placed a particular emphasis on the affidavit of the solicitor assisting the defendant, which set out the process followed in providing the defendant information about the implications of his choice. The solicitor spent approximately 90 minutes advising the defendant both in and outside of the presence of three medical practitioners. He was provided with a copy of the plaintiff's summons and the affidavit of its solicitor. The defendant then read and signed (by placing a pen in his mouth) a letter outlining his wishes and confirming his understanding of the orders the plaintiff proposed to obtain from the Court. He signed a consent form to receive palliative care in the process of the removal of his mechanical ventilation and a consent form which allowed the plaintiff to maintain the defendant's life, at the cost of the plaintiff, if necessary, for his organs to be harvested for donation purposes.

Darke J concluded by finding that '[t]he totality of the evidence concerning capacity leaves me in no doubt that JS had the capacity to make the decision he made yesterday, including the request that the mechanical ventilation be disconnected. The evidence demonstrates that, as part of his decision-making process, JS was able to (and did) weigh up the information he had.'

In the absence of evidence to suggest that the defendant was pressured or coerced into the decision to end his life, the Court made orders allowing the plaintiff to cease the defendant's treatment. This allowed JS to end his life on his terms on his 28th birthday. ■

Notes: **1** *Hunter and New England Area Health Service v A* (2009) 74 NSWLR 88. **2** *Bridgewater Care Group (Inc) v Rossiter* [2009] WASC 229. **3** *Hunter*, see note 1 above, at 30.

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