

BOUVIA v. SUPERIOR COURT

California Court of Appeal, Second District, 1986.
179 Cal.App.3d 1127, 225 Cal.Rptr. 297.

BEACH, ASSOCIATE JUSTICE.

Petitioner, Elizabeth Bouvia, a patient in a public hospital, seeks the removal from her body of a nasogastric tube inserted and maintained against her will and without her consent by physicians who so placed it for the purpose of keeping her alive through involuntary forced feeding.

* * *

Petitioner is a 28-year-old woman. Since birth she has been afflicted with and suffered from severe cerebral palsy. She is quadriplegic. She is now a patient at a public hospital maintained by one of the real parties in interest, the County of Los Angeles. Other parties are physicians, nurses and the

medical and support staff employed by the County of Los Angeles. Petitioner's physical handicaps of palsy and quadriplegia have progressed to the point where she is completely bedridden. Except for a few fingers of one hand and some slight head and facial movements, she is immobile. She is physically helpless and wholly unable to care for herself. * * * She suffers also from degenerative and severely crippling arthritis. She is in continual pain. * * *

She is intelligent, very mentally competent. She earned a college degree. She was married but her husband has left her. She suffered a miscarriage. She lived with her parents until her father told her that they could no longer care for her. She has stayed intermittently with friends and at public facilities. A search for a permanent place to live where she might receive the constant care which she needs has been unsuccessful. She is without financial means to support herself and, therefore, must accept public assistance for medical and other care.

She has on several occasions expressed the desire to die. In 1983 she sought the right to be cared for in a public hospital in Riverside County while she intentionally "starved herself to death." A court in that county denied her judicial assistance to accomplish that goal. * * * Thereafter, friends took her to several different facilities, both public and private, arriving finally at her present location. Efforts by * * * social workers to find her an apartment of her own with publicly paid live-in help or regular visiting nurses to care for her, or some other suitable facility have proved fruitless.

Petitioner must be spoon fed in order to eat. Her present medical and dietary staff have determined that she is not consuming a sufficient amount of nutrients. Petitioner stops eating when she feels she cannot orally swallow more, without nausea and vomiting. As she cannot now retain solids, she is fed soft liquid-like food. Because of her previously announced resolve to starve herself, the medical staff feared her weight loss might reach a life-threatening level. Her weight since admission to real parties' facility seems to hover between 65 and 70 pounds. Accordingly, they inserted the subject tube against her will and contrary to her express written instructions.³

Petitioner's counsel argue that her weight loss was not such as to be life threatening and therefore the tube is unnecessary. However, the trial court found to the contrary as a matter of fact, a finding which we must accept. Nonetheless, the point is immaterial, for, as we will explain, a patient has the right to refuse any medical treatment or medical service, even when such treatment is labeled "furnishing nourishment and hydration." This right exists even if its exercise creates a "life threatening condition."

THE RIGHT TO REFUSE MEDICAL TREATMENT

"[A] person of adult years and in sound mind has the right, in the exercise of control over his own body, to determine whether or not to submit to lawful medical treatment." [] It follows that such a patient has the right to refuse any medical treatment, even that which may save or prolong her life. []

* * *

3. Her instructions were dictated to her lawyers, written by them and signed by her by means of her making a feeble "x" on the paper with a pen which she held in her mouth.

A recent Presidential Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research concluded in part: "The voluntary choice of a competent and informed patient should determine whether or not life-sustaining therapy will be undertaken, just as such choices provide the basis for other decisions about medical treatment. Health care institutions and professionals should try to enhance patients' abilities to make decisions on their own behalf and to promote understanding of the available treatment options * * *. Health care professionals serve patients best by maintaining a presumption in favor of sustaining life, while recognizing that competent patients are entitled to choose to forgo any treatments, including those that sustain life."

* * *

The American Hospital Association Policy and Statement of Patients' Choices of Treatment Options, approved by the American Hospital Association in February of 1985 discusses the value of a collaborative relationship between the patient and the physician and states in pertinent part: "Whenever possible, however, the authority to determine the course of treatment, if any, should rest with the patient" and "the right to choose treatment includes the right to refuse a specific treatment or all treatment * * *"

* * *

Significant also is the statement adopted on March 15, 1986, by the Council on Ethical and Judicial Affairs of the American Medical Association. It is entitled "Withholding or Withdrawing Life Prolonging Medical Treatment." In pertinent part, it declares: "The social commitment of the physician is to sustain life and relieve suffering. Where the performance of one duty conflicts with the other, the choice of the patient, or his family or legal representative if the patient is incompetent to act in his own behalf, should prevail."

* * *

It is indisputable that petitioner is mentally competent. She is not comatose. She is quite intelligent, alert and understands the risks involved.

THE CLAIMED EXCEPTIONS TO THE PATIENT'S RIGHT TO CHOOSE ARE INAPPLICABLE.

* * * The real parties in interest, a county hospital, its physicians and administrators, urge that the interests of the State should prevail over the rights of Elizabeth Bouvia to refuse treatment. Advanced by real parties under this argument are the State's interests in (1) preserving life, (2) preventing suicide, (3) protecting innocent third parties, and (4) maintaining the ethical standards of the medical profession, including the right of physicians to effectively render necessary and appropriate medical service and to refuse treatment to an uncooperative and disruptive patient. Included, whether as part of the above or as separate and additional arguments, are what real parties assert as distinctive facts not present in other cases, i.e., (1) petitioner is a patient in a public facility, thereby making the State a party to the result of her conduct, (2) she is not comatose, nor incurably, nor terminally ill, nor in a vegetative state, all conditions which have justified the termination of life-support system in other instances, (3) she has asked for medical treat-

ment, therefore, she cannot accept a part of it while cutting off the part that would be effective, and (4) she is, in truth, trying to starve herself to death and the State will not be a party to a suicide.

* * *

At bench the trial court concluded that with sufficient feeding petitioner could live an additional 15 to 20 years; therefore, the preservation of petitioner's life for that period outweighed her right to decide. In so holding the trial court mistakenly attached undue importance to the *amount of time* possibly available to petitioner, and failed to give equal weight and consideration for the *quality* of that life; an equal, if not more significant, consideration.

All decisions permitting cessation of medical treatment or life-support procedures to some degree hastened the arrival of death. In part, at least, this was permitted because the quality of life during the time remaining in those cases had been terribly diminished. In Elizabeth Bouvia's view, the quality of her life has been diminished to the point of hopelessness, uselessness, unenjoyability and frustration. She, as the patient, lying helplessly in bed, unable to care for herself, may consider her existence meaningless. She cannot be faulted for so concluding. If her right to choose may not be exercised because there remains to her, in the opinion of a court, a physician or some committee, a certain arbitrary number of years, months, or days, her right will have lost its value and meaning.

Who shall say what the minimum amount of available life must be? Does it matter if it be 15 to 20 years, 15 to 20 months, or 15 to 20 days, if such life has been physically destroyed and its quality, dignity and purpose gone? As in all matters lines must be drawn at some point, somewhere, but that decision must ultimately belong to the one whose life is in issue.

Here Elizabeth Bouvia's decision to forgo medical treatment or life-support through a mechanical means belongs to her. It is not a medical decision for her physicians to make. Neither is it a legal question whose soundness is to be resolved by lawyers or judges. It is not a conditional right subject to approval by ethics committees or courts of law. It is a moral and philosophical decision that, being a competent adult, is hers alone.

* * *

Here, if force fed, petitioner faces 15 to 20 years of a painful existence, endurable only by the constant administrations of morphine. Her condition is irreversible. There is no cure for her palsy or arthritis. Petitioner would have to be fed, cleaned, turned, bedded, toileted by others for 15 to 20 years! Although alert, bright, sensitive, perhaps even brave and feisty, she must lie immobile, unable to exist except through physical acts of others. Her mind and spirit may be free to take great flights but she herself is imprisoned and must lie physically helpless subject to the ignominy, embarrassment, humiliation and dehumanizing aspects created by her helplessness. We do not believe it is the policy of this State that all and every life must be preserved against the will of the sufferer. It is incongruous, if not monstrous, for medical practitioners to assert their right to preserve a life that someone else must live, or, more accurately, endure, for "15 to 20 years." We cannot conceive it to be the policy of this State to inflict such an ordeal upon anyone.

* * * Being competent she has the right to live out the remainder of her natural life in dignity and peace. It is precisely the aim and purpose of the many decisions upholding the withdrawal of life-support systems to accord and provide as large a measure of dignity, respect and comfort as possible to every patient for the remainder of his days, whatever be their number. This goal is not to hasten death, though its earlier arrival may be an expected and understood likelihood.

* * *

Moreover, the trial court seriously erred by basing its decision on the "motives" behind Elizabeth Bouvia's decision to exercise her rights. If a right exists, it matters not what "motivates" its exercise. We find nothing in the law to suggest the right to refuse medical treatment may be exercised only if the patient's *motives* meet someone else's approval. It certainly is not illegal or immoral to prefer a natural, albeit sooner, death than a drugged life attached to a mechanical device.

* * *

We do not purport to establish what will constitute proper medical practice in all other cases or even other aspects of the care to be provided petitioner. We hold only that her right to refuse medical treatment even of the life-sustaining variety, entitles her to the immediate removal of the nasogastric tube that has been involuntarily inserted into her body. The hospital and medical staff are still free to perform a substantial, if not the greater part of their duty, i.e., that of trying to alleviate Bouvia's pain and suffering.

Petitioner is without means to go to a private hospital and, apparently, real parties' hospital as a public facility was required to accept her. Having done so it may not deny her relief from pain and suffering merely because she has chosen to exercise her fundamental right to protect what little privacy remains to her.

Personal dignity is a part of one's right of privacy. * * *