

P P v Health Service Executive
[2014] IEHC 622: The High Court of Ireland (Divisional Court);
Kearns P, Baker, Costello JJ;
26 December 2014

Personal rights of the citizen - Right to life of the unborn child - Conflict between rights - Constitution of Ireland establishing State duty to “respect, and, as far as practicable, defend and vindicate” the personal rights of the citizen and the right to life of the unborn child - Woman carrying 15-week foetus declared brain-dead following “catastrophic” damage to brain - Somatic measures, including mechanical ventilation, feeding by nasogastric tube and medical interventions, applied in order to provide “incubated environment” for foetus because doctors feared legal consequences of allowing natural death - Woman’s father applying for declaration that somatic measures should cease to allow woman’s dignified death - All seven experts agreeing that woman’s recovery impossible and child had negligible prospect of being born alive - Whether right to life of unborn child engaged - Whether right to life of unborn child should prevail over mother’s personal right to dignified death - Whether withdrawal of life-support lawful - Constitution of Ireland, art 40.3.1 and 40.3.3.

The “plain and ordinary meaning” of Article 40.3.3 was to confer upon the unborn child a right to life beyond those situations in which an abortion was contemplated, and the State must defend and vindicate that right as far as practicable. This did not mean that the court should disregard the rights of the mother to a dignified death, and this right was engaged even where the mother had already suffered brain-stem death. In such circumstances the right of the living unborn child must prevail.

The extent to which it was appropriate to vindicate those rights had been considered in previous cases. It was clear from *In re a Ward of Court (withholding medical treatment)* (No. 2) [1996] 2 I.R. 79, that a person’s right to life, although ranking first in the hierarchy of personal rights, was not absolute, and respecting a person’s death could be regarded as an aspect of respecting life. In *Airedale NHS Trust v Bland* [1993] AC 789, Lord Browne Wilkinson had acknowledged that there came a time when the continuation of life support ceased to be in the patient’s best interests and began to constitute battery and trespass to the person. In *Re A (a Minor)* [1993] 1 Med L Rev 98, Johnson J had declared it contrary to the interests of a brain-dead child for his body “to be subjected to the continuing indignity [of life support]”. In a case involving the exercise of his *parens patriae* jurisdiction over a ward in connection with the proposed withdrawal of life support, the President of the High Court would invoke the “best interests principle” articulated in *SR (a Ward of Court)* [2012] 1 IR 305. This involved considering what the ward’s subjective views of his quality of life would be if he were able to make a sound judgment. Part of the Court’s vindication of the unborn child’s right to life therefore involved an enquiry into the “practicality and utility of continuing life support measures”.

Since the child was in the womb of a mother who had died - an environment that was unsafe, unstable and “failing at an alarming rate” - the child had no realistic prospect of being born alive, and its future involved only distress and death. The continuation of life support for the mother was therefore futile.

Since the mother had already suffered brain-stem death, the continuation of somatic support would deprive her of dignity in death and subject her relatives and partner to unimaginable distress.

Accordingly the Court made an order and declaration that it was in the best interests of the child that the medical team withdraw the somatic support.

Recorded at:

<http://www.courts.ie/Judgments.nsf/0/FB8A5C76857E08CE80257DCB003FD4E6>

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