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Parent and Child—Compulsory Medical Care Over Objections of Parents

Ds, who are Jehovah’s Witnesses, refused on religious grounds to permit a necessary blood transfusion for their son, critically ill of a defective heart. They were found guilty of neglect under the juvenile court act, and the court appointed a guardian who granted permission for the transfusion. The Supreme Court of New Jersey affirmed the juvenile court. The court stated that, although Ds’ constitutional rights of religion and rights as parents are to be accorded the highest possible respect, neither rights are beyond limitation. The matter is brought within parens patriae jurisdiction by virtue of parents’ “statutory” neglect of their child in not providing proper medical care. State v. Perricone, 181 A.2d 751 (N.J. 1962).

Despite the ease and straight-forward dispatch with which the New Jersey court treated the Perricone case, the problem of compulsory medical care over parental objections has been considered in only a few jurisdictions.

In the Perricone case, the court presents a concise history of the common law courts acting in fulfillment of their duty as parens patriae. The court recognizes “a sovereign right and duty to care for a child and protect him from neglect, abuse and fraud during his minority.” While the parents could not be convicted of a crime for refusing, on religious grounds, to provide medical aid to their child, the courts could “act to protect the interests of the child, take custody from the parents, and appoint a guardian when the parents had failed in their duty or were unfit . . . .” State v. Perricone, supra at 758.

As to the New Jersey court’s actions being violative of the First and Fourteenth Amendments to the Constitution of the United States, and in support of the jurisdiction of any court in this area, Prince v. Massachusetts, 321 U.S. 158, 166 (1944), is cited for the proposition that “neither rights of religion nor rights of parenthood are beyond limitation.” The freedom of religion has a double aspect: (1) the freedom to believe and (2) the freedom to act. “The first is absolute but, in the nature of things, the second cannot be.” Cantwell v. Connecticut, 310 U.S. 296, 303 (1940). While laws “cannot interfere with mere religious belief and opinion, they may with practices. Suppose one believed that human sacrifices were a necessary part of religious worship, would it be seriously contended
that the civil government under which he lived could not interfere to prevent a sacrifice?" Reynolds v. United States, 98 U.S. 145, 166 (1879). Although the freedom of religion and the right of parents to children are to be accorded the highest possible respect, W. Va. State Bd. of Educ. v. Barnette, 319 U.S. 624 (1943), the right to practice religion freely does not include liberty to expose the child to ill health or death. Parents are free to become martyrs themselves, but they may not so offer up their children. Prince v. Massachusetts, supra.

No West Virginia Supreme Court decision has been found decisive of the proposition in this state; however, a look at the decisions of other jurisdictions may give some indications of West Virginia's probable position. The cases tend to fall into one of three categories.

First, there are states which have explicit statutory language declaring a parent neglectful if he fails to provide necessary medical care for his child. Upon a finding of neglect, these statutes bring the child within the jurisdiction of the court which is empowered to provide the necessary medical care. New York was a pioneer in this field of law, and as early as 1881 the New York penal code imposed a duty of medical care and provided punishment for dereliction of that duty. In People v. Pierson, 176 N.Y. 201, 68 N.E. 243 (1903), the New York Court of Appeals upheld the conviction of a father who allowed his infant daughter to die of pneumonia, refusing to obtain medical services on religious grounds. The Children's Court Act of 1922, N.Y. Misc. Courts, Children's Court Act 324 (1958), gave New York courts an affirmative, statutory power to exercise direct control over the physical welfare of a child. Accord, In re Carstairs, 115 N.Y.S.2d 314 (Dom. Rel. Ct. 1952); In re Rotkowitz, 175 Misc. 948, 25 N.Y.S.2d 624 (Dom. Rel. Ct. 1941); Wingard Petition, 7 Pa. D.&C.2d 522 (1956).

The second category of cases arises in jurisdictions having statutory provisions declaring "dependent" or "neglected" a child who has no parent willing to exercise or capable of exercising proper parental control, who is destitute or whose home by reason of neglect, cruelty or the depravity of its parents is an unfit place for such child. WASH. REV. CODE § 13.04.010 (1951). These jurisdictions generally favor broad interpretation of the statutes to impose an affirmative duty on parents to provide their children with necessary medical care. As early as 1880, the Pennsylvania court found
that a father neglected to "provide" for his children in violation of statute, and the court appointed guardians for the children over the father's objections. It appears that the father's witch doctor type home cure, the "Baunscheidt panacea," had been ineffective, and the infants in question had recently been predeceased by their mother and three brothers and sisters. Heinemann's Appeal, 96 Pa. 112 (1880). A Texas court, in ordering custody of a child to a guardian, held that "medicines, medical treatment and attention, are in a like category with food, clothing, lodging and education as necessaries from parent to child, for which the former is held legally responsible." Mitchell v. Davis, 205 S.W.2d 812 (Tex. Civ. App. 1947). Accord, People ex rel. Wallace v. Labrenz, 411 Ill. 618, 104 N.E.2d 769 (1952); Craig v. State, 220 Md. 590, 155 A.2d 684 (1959); Eggleston v. Landrum, 210 Miss. 645, 50 So.2d 364 (1951). In re Hudson, 13 Wash.2d. 673, 126 P.2d 765 (1942), is contrary to the above cases, but it has been distinguished on the grounds that the omission of medical care is not as neglectful where the child is not in imminent danger and there is a substantial risk attendant to the medical care proposed.

Third, Morrison v. State, 252 S.W.2d 97 (Mo. App. 1952), appears to stand alone for the proposition that, irrespective of any statutory relief, the petitioner has a full remedy through the common law protection of the court acting in parens patriae and thereby procuring necessary medical care for the child, a ward of the state.

West Virginia's statutory provisions would bring the state within the second category of jurisdictions as the language is much the same as in the Washington, Texas, and Illinois statutes, which provide that a child can be brought before the court by petition praying that the person be adjudged "neglected" or delinquent. W. Va. Code, ch. 49, art. 5, § 2(a) (Michie 1961). A "neglected" child "has not proper parental care or guardianship." W. Va. Code, ch. 49, art. 1, § 3 (Michie 1961). All children before the court become wards of the court and must have a medical examination. W. Va. Code, ch. 49, art. 5, § 4 (Michie 1961). In any case of a neglected child the court may commit the child to a guardian or "enter whatever order . . . most conducive to welfare of child." W. Va. Code, ch. 49, art 6, § 5 (Michie 1961). West Virginia's statutory provisions appear to be broad enough to permit a finding of neglect and subsequent medical attention for infants whose parents refuse such care for reasons prejudicial to the welfare of the child.
Looking at some West Virginia decisions, it would appear that the court might well construe the statutes liberally in the best interests of the child. See Hammond v. Dept. of Pub. Assistance, 142 W. Va. 208, 95 S.E.2d 345 (1956), a custody case, wherein the court consistently adhered to two principles: first, the infant's welfare is of paramount importance, and second, the legal rights of a parent will be respected if the welfare of the infant is not impaired. Another custody case, Stout v. Massie, 140 W. Va. 731, 88 S.E.2d 51 (1955), held that the "welfare of the child is the polar star by which the discretion of the court will be guided." In the Stout case the court sustains a position, similar to that taken by the Missouri court in Morrison v. State, supra, that the equity court has jurisdiction even without benefit of statutory enactments. HOGGS, EQUITY PRINCIPLES, § 226 (1st ed. 1900), is cited to substantiate the contention that: "The powers of a court of chancery in England to act as the guardian of infants, and to exercise a general supervision over all matters pertaining to their persons . . . is generally exercised by courts of chancery in this country without dispute."

Stephen Grant Young

Procedure—Involuntary Dismissal—An Interpretation of Rule 41(b) of the Federal Rules of Civil Procedure

P's automobile collided with a train owned by D. P brought an action on August 24, 1954 to recover for injuries alleged to have been received in the collision. After various delays, of which more than 20 months were directly attributable to actions of P's attorney, the district court notified both parties that a pre-trial conference would be held on October 12, 1960. P's counsel informed the judge's secretary that he could not attend the conference because of unfinished business and requested a delay. The request was denied and the court, without having previously notified P or his council of its intended action, dismissed the case with prejudice for failure to prosecute. Held, affirmed. Where all of the circumstances indicate P's attorney has been dilatory in pursuing his claim and, without acceptable excuse, fails to appear at a pre-trial conference, the court is within its power and discretion in dismissing the case with prejudice without notifying P or his counsel of such contemplated action. Link v. Wabash R.R., 379 U.S. 626 (1962).