

SUPERIOR COURT OF NEW JERSEY

CHAMBERS OF
JOHN F. MALONE
PRESIDING JUDGE, CHANCERY



COURTHOUSE
ELIZABETH, NEW JERSEY 07207

March 4, 2009

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Re: Betancourt v. Trinitas Regional Medical Hospital
Docket No. C-12-09

Dear Counsel:

This letter is the court's decision with respect to the referenced matter.

Ruben Betancourt, a 73 year old male, is currently an in-patient at Trinitas Regional Medical Center in Elizabeth. Mr. Betancourt had been admitted to Trinitas for surgery for a malignant thymoma. Following the surgery on January 22, 2008, the patient developed anoxic encephalopathy. Mr. Betancourt was deprived of oxygen as a result of an extubation of a breathing tube and lapsed into unconsciousness. Mr. Betancourt has been and remains in an unconscious state unable to communicate with his physicians or family.

Since January 2008, the patient has been admitted to various treatment facilities including JFK Medical Center's Brain Trauma Unit, Genesis Health Care's Ventilation Unit and Elizabeth Nursing Home. Mr. Betancourt was readmitted to

Trinitas on July 3, 2008 with a diagnosis of renal failure. The patient is on an artificial ventilator and receives dialysis. Nutrition is provided by feeding tube.

Representatives of the defendant advised the Betancourt family that Mr. Betancourt is in an unresponsive irreversible vegetative state and that further treatment would be futile. Trinitas representatives indicated to the family that it is the opinion of the medical staff that mechanical life support treatment should be discontinued. Upon termination of such treatment, Mr. Betancourt would expire as a result of his various medical conditions.

Plaintiff, daughter of the patient, initiated the within action by Order to Show Cause and Verified Complaint. Plaintiff sought entry of a temporary restraining order enjoining the defendant from discontinuing treatment pending further proceedings in the matter. On January 23, 2009, the court entered an order requiring the hospital to continue to provide treatment and directing the resumption of dialysis treatment which had been discontinued. On January 30, 2009, the court directed that the January 23rd order remain in effect pending a plenary hearing. On February 17th and 23rd, the court heard testimony from witnesses on behalf of the hospital and Betancourt family.

Mr. Betancourt's daughter (plaintiff), son and wife testified regarding the patient's condition. All of the family members related their belief that the medical personnel at Trinitas are incorrect in their assessment of Mr. Betancourt. They dispute the findings that he is in an unresponsive, persistent vegetative state. The family recounts their impression that Mr. Betancourt is responsive to

certain stimuli. They state their observation that the patient recoils when approached by medical providers in anticipation of medical services and responds by opening his eyes or turning his head to the sound of certain voices. The family further disputes the contention that treatment is futile and harmful. The testimony of Carl S. Goldstein, M.D., a Board Certified Nephrologist, was presented. Dr. Goldstein indicated his opinion that dialysis treatments were appropriate for Mr. Betancourt who suffers from end stage of renal disease. It was the doctor's opinion that the treatment was not harmful to the patient. The family further argues that their position is supported by notations in the charts by medical staff indicating that Mr. Betancourt was observed to be "awake".

The family members also testified regarding what they believe would be Mr. Betancourt's wishes in connection with continued treatment. The family described Mr. Betancourt as an active person. Before retiring his worked involved manual labor and he continued to be active in retirement. They note that Mr. Betancourt suffered some medical conditions, diabetes and high blood pressure, for which he sought medical treatment and followed directions of his physician. The family describes Mr. Betancourt as a strong willed person who would not give up. It is the opinion of the family members that Mr. Betancourt would want to continue to receive treatment.

The plaintiff seeks an order of the court restraining the defendant from discontinuing or suspending treatment including dialysis, feeding tubes and

ventilation. Further, the plaintiff requests that she be appointed guardian of Mr. Betancourt.

Various treating physicians testified with respect to Mr. Betancourt's current medical condition. In the opinion of these physicians, Mr. Betancourt is in a persistent vegetative state from which he will never recover. The physicians do not expect the patient to live more than a few months. The physicians indicate that Mr. Betancourt is actively dying; his body is decomposing and often septic. The patient suffers from ulcers on his bones due to chronic bone infection and bed sores.

The physicians indicate that Mr. Betancourt does open his eyes and make spontaneous eye movement, however, these movements are reflexive and he does not make eye contact. The patient does not respond to pain or spontaneously move his extremities. It is the opinion of the physicians that continuation of treatment is contrary to the standard of care where, as here, it is futile. The physicians expressed the view that dialysis treatment is medically and ethically inappropriate and inhumane.

The hospital opposes the plaintiff's application for an order requiring the continuation of treatment.

The issue before the court, as stated by the plaintiff, is whether a medical provider on its own initiative can terminate life support services for a patient. The defendant argues that the issue is better framed as whether a medical provider may be required to provide medical care to a patient where the

treatment is futile, against the standard of care and inhumane. However stated, counsel for both parties suggests that the issue has not been addressed by the courts of this state.

The resolution of the question requires consideration of the body of law developed in the right to die cases.

Plaintiff argues that New Jersey cases such as *In Re Quinlan*, 70 N.J. 10 (1976) and *In Re Conroy*, 98 N.J. 321 (1985) consistently held that the decision to withhold treatment is that of the patient or his surrogate decision maker. The plaintiff contends that these cases dealing with patients in either persistently vegetative states or the later stages of a prolonged dying process support the patient's right as expressed through his guardian to make the choice regarding the continuation of medical treatment. It is the role of that surrogate to determine and effectuate what the patient would have chosen if he were able.

It is the hospital's position that these cases are not applicable to the present matter before the court. Trinitas argues that the issue is not whether treatment should be withdrawn but whether physicians should be forced to provide futile medical care when they believe that such treatment is against the standard of care and inhumane. Acknowledging that the issue as framed by the hospital is one of first impression in New Jersey, the hospital argues that support for its position may be gleaned from New Jersey public policy and is supported by decisions of other jurisdictions.

The hospital contends that there is a public interest in allowing physicians to provide quality health care even though the course of treatment may be contrary to the wishes of the patient's family to sustain life at all costs. Public interest is served by promoting dignity when death is inevitable and elevating the quality of life over longevity.

Trinitas further argues that the rationale of *Causey v. St. Francis Medical Center*, 719 So.2d 1072 (LA. App.2d. Cir. 1998) be applied by this court. In *Causey*, the treating physician withdrew dialysis treatment from a 31 year old comatose quadriplegic with end stage renal failure over the objections of the patient's family. The physician believed that continuing dialysis would have no benefit. Dialysis was discontinued, the ventilator removed and the patient died.

The *Causey* court citing *In Re Quinlan* acknowledged the patient's right to participate in medical decision making and the right of a guardian or next-of-kin to act for an incapacitated patient. The court however held that "the court, as the protector of incompetents, however, can override an intolerable choice by a surrogate decision maker." Ultimately, the *Causey* court held that a physician would not be compelled to "provide interventions that in his view would be harmful, without effect or 'medically inappropriate'." *Id.* at 1075.

Defendant argues that in the instant matter the patient is in a persistent vegetative state with no chance of recovery. The treating physicians argue that continuing dialysis is not only against the standard of care, but is also medically and ethically inappropriate. The hospital argues that the court should deny the

plaintiff's request for injunctive relief requiring Trinitas to provide the medical treatment requested by the family.

The resolution of the issue presented in this case must be guided by the principles enunciated by the Supreme Court in *Matter of Jobes*, 108 N.J. 394 (1987). The Court decided that a husband could authorize the removal of a life sustaining nutrition system from his 31 year old wife who was in an irreversible vegetative state. The Court held that it is not the role of the trial court to decide whether treatment should be removed from a comatose patient but rather to establish criteria that respect the right to self determination and protect incapacitated patients.

The Court stated that in cases regarding the withdrawals of life sustaining treatment the "patients' right to self-determination is the guiding principle." Thus, concluded the Court, the goal of the surrogate decision maker was to determine and effectuate what the patient would want. This approach, referred to as the "substituted judgment" doctrine, allows the surrogate decision maker to consider the patient's personal value system to determine if life support systems should be removed.

The decision to continue or terminate life support systems is not left to the courts. The position of the hospital argues that the court take the role of surrogate decision maker. The hospital seeks to have the court exercise its judgment in determining the proper course of treatment for Mr. Betancourt, a task which the Court in *Jobes* ruled is outside the role of the court.

This court concludes that Mr. Betancourt is in a persistent vegetative state and unable to communicate his wishes with respect to the continuation of life supporting treatment. Accordingly, the appointment of a guardian is required. The court grants the application of plaintiff Jacqueline Betancourt to be the guardian of her father. Mr. Betancourt's son, wife and other family members who may be considered did not petition the court to be the guardian nor did they object to Ms. Betancourt's application.

As guardian for Mr. Betancourt, Ms. Betancourt is his surrogate decision maker. The plaintiff's application to restrain the defendant from discontinuing or suspending treatment of Mr. Betancourt is granted. The guardian is authorized to make decisions respecting medical treatment of Mr. Betancourt.

Attorney for the plaintiff shall submit an order consistent with this decision within 10 days.

Very truly yours,



JOHN F. MALONE, P.J.Ch.

JFM/pfk