SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

Nº: 500-17-128746-248

DATE: April 18, 2024

BY THE HONOURABLE FLORENCE LUCAS, J.S.C.

McGILL UNIVERSITY HEALTH CENTRE
and
Dr. CLAUDINE LAMARRE
Applicants
vs.
O. S.
Defendant / Concerned Person
and
P. S.
Impleaded Party / Husband

JUDGMENT

---

[1] O. S. (**Mrs. S.**), is a 42-year-old woman born in Nigeria. She is married to P. S. (**husband**), both Nigerian lawyers. The couple had lived in Nigeria, but also in the United Kingdom and the United States of America, where their two children were born in 2010 and 2015.

[2] Mrs. S. arrived in Montreal in Fall 2021, with her children, to undertake graduate studies at the School A. Both children attend elementary school and high school, as they will complete Grade 3 and Secondary 3 on June 21, 2024. Her husband stayed to continue to practice in their Law Firm in Lagos, Nigeria.

[3] She had no health concerns and had no reason to visit the hospital until July 16, 2023. That day, she woke up feeling discomforted, and after a telephone discussion with her husband, they decided that she should visit the emergency of the Montréal General Hospital. Thinking that it was going to be a routine visit, accompanied by her two children, Mrs. S. collapsed in the lobby of the hospital and suffered a prolonged cardiorespiratory arrest, requiring resuscitation and reanimation achieved after a prolonged period of time.

[4] Her brother-in-law, living in Massachusetts, U.S.A., immediately travelled down to Montreal, early followed by her husband, hurrying from Nigeria. Since his arrival, every day, he has stayed with his wife during hospital visiting hours.

[5] After 8 months, Dr. Ashvini Gursahaney, Chief of the Critical Care Program of the McGill University Health Centre (**MUHC**), one of the nine treating physicians since July 2023, exposes their unanimous opinion that there is no chance of neurological recovery, that current treatments are keeping her alive but preventing her from dying peacefully and in dignity. Therefore, it is their recommendation to change the level of intervention, remove artificial life support and opt for palliative and comfort measures[1].

[6] The Husband understands the severity of the neurological injury. He has always shown gratitude and appreciation to the physicians, nurses and staff of the MUHC. However, he asks the Applicants to extend his wife's treatment until June 28, 2024, by the end of the school year, and to collaborate in transferring her to Nigeria so that she can be treated and die with dignity. He claims Mrs. S.'s fundamental rights to live, be cared for and pass away in her country.

[7] Given the Husband's refusal to modify the treatment plan for Mrs. S., the Applicants are seeking the Court's authorization to implement a new care plan which would essentially entail stopping all current treatments and limiting her care to palliative and comfort measures (**Care Plan**).

---

[1] Exhibit P-1, Medical report drafted by Dr. Ashvini Gursahaney, February 6, 2024.

1. APPLICABLE LEGISLATION

[8] Civil Code of Quebec[2]:

> **12.** A person who gives his consent to or refuses care for another person is bound to act in the sole interest of that person, complying, as far as possible, with any wishes the latter may have expressed.
>
> If he gives his consent, he shall ensure that the care is beneficial notwithstanding the gravity and permanence of certain of its effects, that it is advisable in the circumstances and that the risks incurred are not disproportionate to the anticipated benefit.
>
> **13.** Consent to medical care is not required in case of emergency if the life of the person is in danger or his integrity is threatened and his consent cannot be obtained in due time.
>
> It is required, however, where the care is unusual or has become useless or where its consequences could be intolerable for the person.
>
> **15.** Where it is ascertained that a person of full age is incapable of giving consent to care required by his or her state of health and in the absence of advance medical directives, consent is given by his or her mandatary, tutor or curator. If the person of full age is not so represented, consent is given by his or her married, civil union or de facto spouse or, if the person has no spouse or his or her spouse is prevented from giving consent, it is given by a close relative or a person who shows a special interest in the person of full age.
>
> **16.** The authorization of the court is necessary where the person who may give consent to care required by the state of health of a minor or a person of full age who is incapable of giving his consent is prevented from doing so or, without justification, refuses to do so; it is also necessary where a person of full age who is incapable of giving his consent categorically refuses to receive care, except in the case of hygienic care or emergency.
>
> **23.** When the court is called upon to rule on an application for authorization with respect to care or the alienation of a part of a person's body, it obtains the opinions of experts, of the person having parental authority, of the mandatary or of the tutor and of the tutorship council; it may also obtain the opinion of any person who shows a special interest in the person concerned by the application.
>
> The court is also bound to obtain the opinion of the person concerned unless that is impossible, and to respect his refusal unless the care is required by his state of health.
>
> [Emphasis added]

---

[2] RLRQ c. CCQ-1991.

[9] *Canadian Charter of Human Rights and Freedoms*[3] :

> **7.** Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

[10] *Charte québécoise des droits et libertés de la personne*[4] :

> **1.** Every human being has a right to life, and to personal security, inviolability, and freedom.
>
> **4.** Every person has a right to the safeguard of his dignity, honour and reputation.
>
> **5.** Every person has a right to respect for his private life.
>
> **10.** Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, color, sex, gender identity or expression, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap.
>
> [Emphasis added]

[11] *Act Respecting End-of-Life Care*[5]:

> **1.** The purpose of this Act is to ensure that end-of-life patients are provided care that is respectful of their dignity and their autonomy. The Act establishes the rights of such patients as well as the organization of and a framework for end-of-life care, including medical aid in dying, so that everyone may have access, throughout the continuum of care, to quality care that is appropriate to their needs, including prevention and relief of suffering.
>
> In addition, this Act allows the exercise of some of those rights by patients who are not at the end of life so that they receive end-of-life care in cases where their condition requires it.
>
> Lastly, this Act recognizes the primacy of freely and clearly expressed wishes with respect to care, in particular by establishing an advance medical directives regime.
>
> **2.** The provision of end-of-life care is to be guided by the following principles:

---

3 *Canadian Charter of Rights and Freedoms,* s 7, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), c 11.

4 *Charte québécoise des droits et libertés de la personne,* CQLR c C-12.

5 *Act respecting end-of-life care,* CQLR c S-32.0001.

> (1) respect for patients and recognition of their rights and freedoms must inspire every act performed in their regard;
>
> (2) patients must be treated, at all times, with understanding, compassion, courtesy and fairness, and with respect for their dignity, autonomy, needs and safety; and
>
> (3) the healthcare team providing care to patients must establish and maintain open and transparent communication with them.
>
> [Emphasis added]

2. ANALYSIS

[12] A careful analysis by the Court is always required, within the parameters of a step-by-step analysis well defined by the Court of Appeal in *Institut Philippe Pinel de Montréal* v. *A.G.*[6] and in *F.D.* v. *Centre universitaire de santé McGill (Hôpital Royal-Victoria)*[7]. The burden of proof is on the Applicants.

[13] More particularly, the request for authorization of treatment in the present context is, amongst other legal provisions, governed by the *Charters of human rights and freedoms*.

[14] Undoubtedly, Mrs. S. is incapable of giving her consent given her medical condition exposed above. However, her husband categorically refuses the Applicant's Care Plan to limit her care to palliative and comfort measures. Consequently, the Court has jurisdiction.

[15] Is the Care Plan required? Are the risks incurred disproportionate to the anticipated benefit[8]?

[16] According to the Dr. Gursahaney's medical report, Mrs. S. suffers from severe anoxic encephalopathy post prolonged cardiorespiratory arrest leading to[9] :

> a) Minimally Conscious State (MCS) / Neurovegetative state with no chance of neurological recovery;
>
> b) severe spasticity and quadriplegia;

---

6 *Institut Philippe Pinel de Montréal* c. *A.G.,* 1994 CanLII 6105 (QC CA).
7 ***F.D.*** c. *Centre Universitaire de santé McGill (Hôpital Royal-Victoria)*, 215 QCCA 1139.
8 *Id*. par. 54.
9 Exhibit P-1.

c) ventilator dependence for breathing due to above and severe weakness (lifelong dependence);

d) kidney failure requiring chronic intermittent dialysis (lifelong dependence).

[17] Dr. Gursahaney's opinions are supported by progress notes drafted on September 3, 2023[10], as well as a second opinion sought from a neurologist on December 5, 2023[11]. No counter-expertise was produced.

[18] Dr. Gursahaney and his colleague unanimously conclude that there is no chance of neurological recovery, that therapeutic futility has been reached and that Mrs. S. should be allowed to pass away in dignity.

[19] In fact, all agree that Mrs. S. should be allowed to live the last moments of her life and pass away in dignity.

[20] This is exactly the goal of her loved ones.

[21] The husband, supported by the family members and their community[12], desires to move Mrs. S. back to Nigeria where the majority of her family lives. Mrs. S. did not plan to live in Canada permanently. She had come in Montreal for her studies, which she had concluded in June 2023, just before her hospitalisation in July. It was agreed that the husband would stay in Nigeria, to continue practicing in their Law Firm. Mrs. S. does not have any family members in the province of Quebec.

[22] Behind closed doors at the hospital, the husband says that some doctors are apparently less assertive. They told him that the brain is complicated and that no one can tell, referring to exceptional cases of recovery over a period of time. This leaves doubt in his mind as to the unanimity of the diagnosis. In any case, he considers that his wife would have chosen and should have the right to return to her country to live out her last moments and die with dignity.

[23] The husband claims her fundamental rights to live, be cared for and pass away peacefully and in dignity, with her relatives, in her country. This is why he is requesting to

10 Exhibit P-2.
11 Exhibit P-3.
12 Exhibit D-15: Sworn Declaration of Dr. Hezekiah Shobiye (DrPH, MPA, MBA), March 28, 2024; Exhibit D-16 : Sworn Declaration of Patti Miller (Pastor of the Evangel Pentecostal Church), March 25, 2024.

transfer his wife in Nigeria, in June 2024, after the children finish their school year. Mrs. S. is already registered as a patient at Paelon Memorial Hospital, in Laos. But this implied that she would remain under the Applicants' care for 2 1/3 more months.

[24] In response, the Applicants allege that the medical repatriation of Mrs. S. to Nigeria is not a viable option because 1) first and foremost, it goes against her best interest; 2) it is unrealistic, since Mrs. S.'s insurer would have to agree to participate, otherwise, the husband would have to cover the significant costs (over $ 150 000), to organise the transfer and collaborate with the repatriation, as well as taking into account that Mrs. S.'s children are attending school in Quebec and 3) some might argue that, in the meantime, another patient is being deprived of a place and care in hospital.

[25] Firstly, the Applicants allege that the Care Plan is required, beneficial, and timely for Mrs. S. in the present circumstances for the following reasons :

a) There is undue discomfort and suffering with no chance of neurological or functional recovery;

b) She should be allowed to pass away with a focus on comfort, alleviating suffering and treating her with dignity;

c) She has been reassessed and the lack of evolution or improvement in over 8 months makes it absolutely clear that there is no chance of recovery;

d) Although her repatriation to Nigeria is medically and physically possible at a significant cost to the family, ongoing mechanical life support remains inappropriate given the dismal prognosis and ongoing undue discomfort and suffering.

[26] In law, the Applicants plead that if they continue the actual treatments, it would be "acharnement thérapeutique", proscribed by the jurisprudence[13].

[13] *A.P.* c. *Centre hospitalier universitaire Sainte-Justine*, 2023 QCCA 58; *Centre intégré de santé et de services sociaux de Laval* c. *A.L.*, 2023 QCCS 3740; *CIUSSS de l'Est-de-l'Île-de-Montréal* c. *E.M.*, 2021 QCCS 2073; *McGill University Health Centre (MUHC)* c. *M.S.*, 2019 QCCS 3851; *Centre de santé et services sociaux Richelieu-Yamaska* c. *M.L.*, 2006 QCCS 2094; *Centre intégré universitaire de santé et de services sociaux de l'Estrie - Centre hospitalier universitaire de Sherbrooke* c. *X,* 2024 QCCS 532.

[27] By definition, “acharnement thérapeutique” means “[u]n traitement est généralement considéré comme « médicalement futile » ou non bénéfique s’il n’offre aux patients aucun espoir raisonnable de guérison, d’amélioration ni aucun avantage quelconque ”[14].

[28] Here, the two-month extension of the current treatment claimed by the husband is not futile and is of fundamental benefit to Mrs. S. since it enables her to live out her last moments and die with dignity, at home.

[29] In *Curateur public du Québec et C.L.* case, the Honourable Babak Barin rightfully wrote[15] :

> [1] Dignity is an inviolable right. It belongs to every person and its significance for the individual will vary from person to person. The recognition of the inherent right to dignity is one of the cornerstones of a free and democratic society. Section 4 of the Charter of human rights and freedoms, like the preamble of the Universal Declaration of Human Rights ratified by Canada more than forty-five years ago, recognizes that every person has a right to the safeguard of his or her dignity.
>
> [2] Dignity is impacted when a person’s freedom or autonomy to make a personal choice is affected. No person should be placed beneath the dignity unique to that individual. Identifying the uniqueness of a person’s dignity is not a simple task. It necessitates sensitivity, intuition, patience, and occasionally, a dose of, courage.
>
> [Emphasis added]

[30] In general, the right to choose where to establish one’s home falls within the scope of the liberty guaranteed by the *Canadian Charter*. As Justice La Forest stated in *Godbout v. Longueuil (City)*[16]: “[…] the autonomy protected by the s. 7 right to liberty encompasses only those matters that can properly be characterized as fundamentally or inherently personal such that, by their very nature, they implicate basic choices going to the core of what it means to enjoy individual dignity and independence. As I have already explained, I took the view in B. (R.) that parental decisions respecting the medical care provided to their children fall within this narrow class of inherently personal matters. In

---

14 Antoine Payot, Marie-Ève Bouthillier et Julie Cousineau, *Éthique Clinique : Un guide pour aborder les situations humaines complexes*, Montréal, Éditions CHU Sainte-Justine, 2021; *CIUSSS Estrie, Id.,* par. 37.

15 *Curateur public du Québec et C.L.*, 2021 QCCS 4584.

16 *Godbout* v. *Longueuil (City),* [1997] 3 S.C.R. 844, par. 66.

my view, choosing where to establish one's home is, likewise, a quintessentially private decision going to the very heart of personal or individual autonomy."

[31] In particular, in the important context of our society's debate on medical aid in dying, a Select Committee (*Comité de juristes experts*), cited by Justice Christine Baudoin, then a judge of the Quebec Superior Court, determined that " the rights of patients at the end of life include the right to information, the right to confidentiality, the right to choose the place where one's life will end, and above all, the right to decision-making autonomy. In the context of end-of-life care, a patient's right to decision-making autonomy means [TRANSLATION] "to the right to choose the moment and manner of dying, when death has become a probable outcome of his or her treatment"[17].

[32] Consequently, the Applicants' Care Plan denies Mrs. S. rights of liberty, autonomy and dignity, by depriving her to be transferred, to be cared for and ultimately, to pass away in her country.

[33] In addition, according to her husband, the family members and her pastor, it would be her wish to move back to Nigeria[18], and her wishes must be taken into consideration[19].

[34] In view of all facets of a person's dignity, and not only from a medical point of view, the Court considers that the beneficial effects of the irreversible Care Plan do not outweigh Mrs. S.'s right to have her fundamental rights respected.

[35] Secondly, the evidence confirms that the husband has taken every step, obtained all the necessary authorizations (Paelon Memorial Hospital, Flying Doctor Nigeria, Guaranty Trust Bank Ltd.)[20] and planned all the measures to ensure a smooth transfer of his wife to her registered hospital in Nigeria, as well as to reduce the impact on their children so that they may complete their school year.

[36] At the hearing, Dr. Gursahaney voluntarily declared that, according to his experience, he considers that it is medically and physically possible and feasible to transfer Mrs. S., as she has been stable for 8 months, regardless of the fact that all transport involves risks. The physician made it clear that in any event, if it is the husband's

---

17 ***Truchon*** c. *Procureur général du Canada*, 2019 QCCS 3792, par. 135 [English version, emphasis added].
18 Exhibit D-6; Peter Shobiye's Testimony; Exhibits D-15 and D-16 : Sworn Declarations.
19 *Act Respecting End-of-Life Care*, supra, note 5, section 2; *F.D.*, supra, note 8, par. 28.
20 Exhibits D-1 to D-5, D-8 to D-11.

choice, the MUHC medical team would collaborate and that they are not there to block his efforts. In fact, Dr. Gursahaney wrote a letter and fulfilled a medical summary with all the relevant documents to initiate and facilitate the medical transfer, accepted by Paelon Memorial Hospital[21].

[37] However, the physician explains that the husband's proposition to wait two months is problematic, based on his first premise that the escalation of care is not in Mrs. S.'s best interest. Dr. Gursahaney does not believe that the issue of waiting is appropriate.

[38] In fact, school authorities confirm that the successful completion of 3rd term is mandatory in order to progress to the next grades. The last day of the school year is June 21, 2024[22]. Accordingly, the husband has planned the transfer on June 28, 2024, by air ambulance already contracted and reserved[23]. The children's best interest[24] explains the two-month delay required by the husband, who otherwise would be glad to return to Nigeria immediately. He has planned therapeutic support for the children, to cope with the traumatic incident and the move to Nigeria.

[39] In the Court's opinion, it would be unreasonable and inappropriate to proceed with the transfer now, suggesting that the husband and his children remain in Montreal until June, away from his wife, their mother and the support of their families.

[40] In reality, there is no emergency, at least not in the sense of article 16 C.C.Q. Mrs. S. has been stable for 8 months, has recovered from episodes of infections and does not show any signs of real suffering, considering her minimally conscious state.

[41] The Court concludes that the evidence does not confirm that the husband's transfer is unrealistic, unreasonable, inappropriate and contrary to Mrs. S.'s interest.

[42] Thirdly, from the outset, « justifying a violation of the fundamental rights is an arduous process, first, because the rights to life, liberty and security of the person are not easily outweighed by competing social interests »[25].

---

21 Exhibits D-1 to D-3, D-9.
22 Exhibits D-12 to D-14.
23 Exhibits D-8 to D-10.
24 Section 33 of the *Civil Code of Quebec.*
25 *Truchon*, supra., note 17, par. 592.

[43] In the case at hand, the Court shares the opinion that « [a] person's rights and liberties must supersede administrative obstacles. No matter the state of health care in a free and democratic society, hospital beds cannot be freed at the cost of inviolable civil and personal rights »[26].

[44] In the end, the Court concludes that the beneficial effects of the Care Plan do not outweigh Mrs. S.'s fundamental rights to live, to be cared for and ultimately, to pass away in her country.

[45] Given the exceptional circumstances of this case, the Applicants' demand for care must be dismissed.

FOR THESE REASONS, THE COURT:

[46] **DISMISSES** the *Application to introduce proceedings for an authorization of care,* February 7, 2024, of the Applicants;

[47] **WITHOUT LEGAL COSTS** considering the nature of the proceedings.

_____
FLORENCE LUCAS, J.S.C.

Me Nadime Elfangary
CENTRE UNIVERSITAIRE DE SANTÉ MCGILL (CUSM)
Attorney of Applicants

Me Abla, Kekeli Maglo
CERNO AVOCATS
Attorney of the Impleaded Party / Husband

Dates of hearing : April 4, 2024
April 10, 2024 - reception of the Husband's authorities
April 12, 2024 - reception of the Applicants' response

[26] *McGill University Health Centre* c. *K.C.*, 2022 QCCS 3570, par. 54.