Order in the Piazzi Case

In the Superior Court of Richmond County
State of Georgia

University Health Services, Inc.,
Petitioner,

v.

Robert Piazzi, David Hadden, and The Division of Family and Children Services of the Department of Human Resources of the State of Georgia, and Samuel G. Nicholson, as Guardian ad litem for the Unborn Child of Donna Piazzi, Respondents.

Civil Action File
NO. CV86-RCCV-464

Order

On July 25, 1986, this case came before the Court for a hearing on University Health Service, Inc.'s petition for a declaratory judgment that life support systems should be maintained for Donna Piazzi in order to preserve the life of her unborn child. All parties were present personally or were represented by counsel, and all parties consented to this expedited hearing as provided for in O.C.G.A. § 9-4-5. On the basis of the evidence and arguments of counsel, the Court renders the following findings of fact and conclusions of law:

Findings of Fact

1. University Health Services, Inc., which operates University Hospital, filed a petition for declaratory relief requesting an order and judgment of this court declaring the rights and relations of the parties and, in particular, an order that life support systems be maintained to give the unborn child of Donna Piazzi the opportunity to develop and be delivered.

2. On June 27, 1986, Donna Piazzi was brought to University Hospital in an unconscious condition. Since her arrival at the hospital, Donna Piazzi's condition has deteriorated until the point that she is now brain dead.

3. As of July 25, 1986, Mrs. Piazzi was approximately 20½ weeks pregnant. The fetus is "quickened," meaning it is moving in the womb. The fetus is not now capable of surviving outside the mother's womb and, therefore, is not viable.

4. There exists a reasonable possibility that with continued life support Donna Piazzi's body can remain functioning until the point that the fetus would be viable and could be delivered with a reasonable possibility of survival.

5. If the fetus is delivered and survives there is a possibility it will suffer from abnormalities such as mental retardation, but it was and is impossible to determine the existence of such abnormalities prior to birth. There also exists a reasonable possibility that the child, if it survives, will be normal.

6. Robert Piazzi is the lawful husband of Donna Piazzi. David Hadden, although not the husband of Donna Piazzi, claims to be the father of the fetus, and this claim was not disputed by Robert Piazzi.

7. Robert Piazzi has requested that the hospital terminate life support for Donna Piazzi, a decision that would render death to the fetus a medical certainty at this time.

8. David Hadden has requested that the hospital maintain life support systems for Donna Piazzi in order that the fetus be given the opportunity to develop and survive.

9. The Division of Family and Children Services has taken the position that the decision in this case is a medical, not legal, decision; therefore, the Division argues that the court has no jurisdiction in the case and requests the hospital's petition be dismissed.

10. A guardian ad litem was appointed by the Court to represent the interest of the unborn child. The guardian ad litem requests that life support systems be maintained.

Conclusions of Law

This case poses two related questions of law: whether the Court has jurisdiction to decide a dispute involving the maintenance of life support systems for a non-viable fetus, and, if the Court does have jurisdiction, whether the Court should order that life support systems be maintained in order to give the fetus the opportunity to develop and be delivered.

Contrary to the contention of the Division of Family and Children Services in its motion to dismiss, this Court does have jurisdiction to decide whether the life of the unborn fetus should be protected. The Division of Family and Children Services contends that *Roe v. Wade,* 410 U.S. 113 (1973), deprives the Court of jurisdiction. Such is not the case. In *Roe v. Wade,* the United States Supreme Court held that

the privacy interests of the mother are sufficiently strong to preclude the State from regulating the mother's right to an abortion of a non-viable fetus. The Supreme Court did not preclude a state court's jurisdiction to hear a dispute with regard to the life of an unborn fetus; moreover, the privacy rights of the mother are not a factor in this case because the mother is dead as defined by O.C.G.A. § 31-10-16. *Roe v. Wade* expressly recognizes that a state may assert interest in protecting potential life, and this court is a proper forum for determination of the fate of this fetus. Therefore, the motion to dismiss based on lack of jurisdiction is denied.

Turning to the merits of this case, the Court notes that it is confronted with a question of first impression. The law is settled that prior to viability the mother may decide to abort a fetus, *Roe v. Wade, supra,* and that after viability the state can both prohibit abortions and require that the mother undergo necessary treatment to protect the life of the fetus. *Jefferson v. Griffin Spalding County Hospital Authority,* 247 Ga. 86, 274 S.E.2d 457 (1981). These well-settled principles of law do not apply here because the mother is brain dead and the fetus is not yet viable. Because of the lack of authority directly on point, this Court must discern the policy of the State from the law as developed in analogous situations.

In *Jefferson v. Griffin Spalding County Hospital Authority, supra,* the Georgia Supreme Court refused to stay the order of a lower court requiring a mother to undergo a caesarean section delivery even though such a procedure violated the mother's religious beliefs. Although *Jefferson v. Griffin Spalding County Hospital Authority* is factually distinguishable because the fetus in that case was viable, the court's ruling clearly showed the state's interest in, and preference for, the preservation of life or potential life.

In *In re L.H.R.* 253 Ga. 439, 446, 321 S.E.2d 716, 723 (1984), the Georgia Supreme Court found that "the State has an interest in the prolongation of life." The court held that the state has a duty to preserve the possibility of meaningful life and that a family member or guardian has no right to terminate life unless the patient is diagnosed terminally ill with no hope of recovery and in a chronic vegetative state with no reasonable possibility of attaining cognitive functions. The clear implication of *In re L.H.R.* is a public policy favoring the maintenance of every reasonably possible chance for life.

In addition to the case authority discussed above, the Georgia legislature has enacted several statutes which further support the policy of protecting life. The Georgia legislature has enacted a law permitting a competent adult to sign a living will providing for the termination of the person's life support systems under certain circum-

stances O.C.G.A. § 31-32-1, *et seq.* The legislature specifically restricted the statute so that the living will would have no effect if the adult were pregnant. O.C.G.A. §§ 31-32-3(b), -8(a)(1). Accordingly, even though the law permits a patient to choose whether or not life support systems will be maintained for that patient, the legislature has specifically provided that the patient cannot make the decision if it will affect an unborn child.

The legislature has also enacted a feticide statute, O.C.G.A. § 16-5-80, which makes the killing of a quickened fetus a crime. This statute evidences a state interest in a quickened fetus and a policy of protecting the potential life of that fetus. *See also, Shirley v. Bacon,* 154 Ga.App. 203, 267 S.E2d 809 (1980) (recognizing a cause of action for wrongful death for the death of a quickened fetus).

Based on the foregoing cases and statutes, the Court concludes that public policy in Georgia requires the maintenance of life support systems for a brain dead mother so long as there exists a reasonable possibility that the fetus may develop and survive. The Court furthermore finds no case law or authority in Georgia which supports the right of anyone other than a mother to terminate a quickened fetus that is not yet viable. Finally, the United States Supreme Court decisions upholding the rights of women to abort non-viable fetuses, *e.g., Roe v. Wade, supra,* are inapplicable because those decisions are based on the mother's right of privacy, which right was extinguished upon the brain death of Donna Piazzi. Accordingly, the Court concludes that so long as there exists a reasonable possibility that a non-viable fetus can develop and survive with the maintenance life support systems for its brain dead mother, then those life support systems must be maintained.

Judgment of the Court

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the petition of University Health Services, Inc., for a declaratory judgment be granted and that life support systems for Donna Piazzi be maintained.

So ordered this 4th day of August, 1986.

WILLIAM M. FLEMING, JR.
Judge, Superior Court