



B (R) v. Children's Aid Society of Metropolitan Toronto

[1995] 1 SCR 315; (1995) 122 DLR (4th) 1; [1995] 4 LRC 107

Country: Canada

Region: Americas

Year: 1995

Court: Supreme Court

Health Topics: Child and adolescent health, Health care and health services

Human Rights: Freedom of religion, Right to liberty and security of person, Right to life

Facts

The appellant parents of a premature baby objected on religious grounds to their child being given a blood transfusion, despite medical opinion that such treatment might be necessary to save the baby's life. The Provincial Court granted the respondent Society temporary wardship of the baby pursuant to the Child Welfare Act, and a blood transfusion was carried out. The appellants appealed to the District Court on the grounds that, by denying them the right to choose medical treatment for their child, the Act breached their constitutional rights to life, liberty, and security of the person and freedom of religion (Charter of Rights and Freedoms, sections 7 and 2(a) respectively) and was not justified as a reasonable limit on their rights under section 1.

The District Court dismissed their appeal on the ground that, as the transfusion had been administered and the wardship terminated, there was no longer any lis between the parties, but the Court of Appeal overturned this decision and referred the matter back to the District Court. The appellants' claim was subsequently dismissed on its merits and costs were awarded against the Attorney General of Ontario, who had intervened in the proceedings. Both the appellants' main appeal and the Attorney General of Ontario's appeal on the issue of costs were dismissed by the Court of Appeal and further appeals were lodged with the Supreme Court.

[Adapted from INTERIGHTS summary, with permission]

Decision and Reasoning

Dismissing the appeal, the Court held that the parents' rights had not been violated. The Court reasoned that, although the liberty interest of a parent includes the rights to nurture a child, care for its development and make decisions on fundamental matters such as medical treatment, the state interest in protecting children at risk is a pressing and substantial objective and the process contemplated by the Act was carefully crafted, adaptable to a myriad of different situations and far from arbitrary. The restrictions on parental rights to freedom of religion were, therefore, amply justified under section 1. The Court noted that the Act required that parents be given reasonable notice of a hearing which might affect their rights, that the wardship order be granted by a judge following an adversarial process, and that the initial order be reviewed before its expiry. This procedure was consistent with the fundamental justice qualification on the right to liberty in section 7.

Justice Lamer held that there was no infringement of the parents' liberty interest because the constitutional protection afforded by section 7 does not include the parental right to choose (or refuse) medical treatment for their children.

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Decision Excerpts

"The Act allows the state to assume parental rights when a judge has determined that a child is in need of treatment that his parents will not consent to. As already stated when discussing the conformity of state intervention with the principles of fundamental justice, the process contemplated by the Act is carefully crated, adaptable to a myriad of different situations, and far from arbitrary. The Act makes provision for notice to be given, for evidence to be called, for time limits to be imposed upon Crown wardship and other orders, as well as for procedural protections to be afforded to parents. The restrictions the Act imposes on parental rights are, in my view, amply justified." Para. 113.

