Cuthbertson v. Rasouli

2013 SCC 53

Country: Canada
Region: Americas
Year: 2013
Court: Supreme Court
Health Topics: Informed consent
Human Rights: Right to bodily integrity

Facts

Doctors Cuthbertson and Rubenfeld sought a declaration that the withdrawal of life support from a patient was not treatment requiring consent under the Health Care Consent Act (â€œHCCAâ€•) where its continued provision is deemed futile. In 2010, following surgery to remove a benign brain tumor, Mr. Rasouli contracted an infection that caused severe brain damage. Rasouliâ€™s physicians believed that he was in a persistent vegetative state and that there was no realistic possibility of recovery. The physicians believed that the life support keeping Rasouli alive was no longer of medical benefit and made plans for its withdrawal. However, Rasouliâ€™s wife and substitute decision maker (â€œSDMâ€•) under the HCCA objected to the withdrawal of life support. She believed that, as a devout Shia Muslim, Rasouli would wish to be kept alive.

Decision and Reasoning

The majority of the Supreme Court of Canada held that withdrawal of life support constituted treatment under the HCCA and therefore required consent. Under the HCCA, medical professionals must not administer treatment without first obtaining consent. â€œTreatmentâ€• is defined as â€œanything that is done for a therapeutic, preventive, palliative, diagnostic, cosmetic or other health-related purpose.â€• If a patient is incapable, their SDM must give consent on their behalf.

The Court reasoned that withdrawal of life support involves a series of acts performed for the health-related purpose of preventing further suffering at the end of life. Further, it involves physical interference with the patient and is usually followed by the administration of palliative care, both of which require consent. Finally, including withdrawal of life support in the definition of â€œtreatmentâ€• was consistent with the purpose of the statute, which was to protect patient autonomy.

The Court held that if a physician believed an SDM was not acting in the patientâ€™s best interests, they could challenge the SDMâ€™s decision before the Consent and Capacity Board (â€œthe Boardâ€•)â€”a quasi-judicial bod created under the HCCA. The court acknowledged that physicians may face ethical dilemmas in continuing life support when they believe it is no longer of medical benefit. However, it held that the avenue to challenge the SDMâ€™s decision before the Board, and the option of transferring the patientâ€™s care to another hospital or physician were adequate alternatives.

The two dissenting judges argued that â€œtreatmentâ€• in the HCCA does not include withdrawal of treatment, and the common law governed withdrawal of treatment in Ontario. As such, disputes about withdrawal of treatment should be decided by the courts rather than the Board.

Decision Excerpts

â€œAt a minimum, if the processes involved in withdrawal of care are health-related, they do not cease to be treatment merely because one labels them cumulatively as â€˜withdrawal of treatmentâ€™. This applies to withdrawal of life support, as described in this case. The reality is that in Mr. Rasouliâ€™s situation, the distinction between â€˜treatmentâ€™ and â€˜withdrawal of treatmentâ€™ is impossible to maintain. The withdrawal consists of number of medical interventions, most if not all done for health-related purposes. Viewed globally, a series of distinct acts may be viewed as â€˜withdrawalâ€™ of treatment. But viewed individually, each act may be seen as having a health-related purpose, and hence constitute â€˜treatmentâ€™ requiring consent.â€• Para. 60.

â€œWithdrawal of life support is inextricably bound up with care that serves health-related purposes and is tied to the objects of the Act. By removing medical services that are keeping a patient alive, withdrawal of life

support impacts patient autonomy in the most fundamental way.â€• Para. 68.