



Bentley v. Maplewood Seniors Care Society

2015 BCCA 91

Country: Canada

Region: Americas

Year: 2015

Court: Court of Appeal, British Columbia

Health Topics: Aging, Chronic and noncommunicable diseases, Diet and nutrition, Health care and health services, Hospitals, Informed consent, Mental health

Human Rights: Right to bodily integrity, Right to health

Facts

Mrs. Bentley was an 83-year-old woman suffering from Alzheimer's Disease. Mrs. Bentley had not spoken since 2010 and did not recognize anyone. In 1991 she had signed a directive that expressed her desire to be allowed to die and not be kept alive by artificial means or heroic measures in case there was no reasonable expectation of recovery from serious physical or mental disability. The directive also stated that she wanted no nourishment or liquids if she was in a state of mental deterioration that prevented her from recognizing her family members. In that document, she named her husband and failing him, one of the daughters to serve as proxy for making medical decisions in case she is unable to do so.

Mrs. Bentley was a patient at a care facility run by Maplewood Seniors Care Society. She could not eat independently and had to be assisted by the staff. The staff never forcefully fed her when she did not open her mouth on being prompted. Mrs. Bentley's family sought declaratory relief that would prohibit the care facility staff from giving Mrs. Bentley food and water. This would result in her death within a few weeks. They also sought for a declaration that prompting her to eat by placing the spoon or cup near her mouth constitutes battery at common law.

At trial the petition was dismissed. The judge accepted an expert's evidence that Mrs. Bentley had the capacity to refuse or accept nourishment. Accordingly, the judge found that Mrs. Bentley was communicating her consent by accepting food and water- she also indicated preference for certain flavours and ate different amount at different time. The family appealed the trial judge's finding in relation to their claim of battery on the following grounds that the trial judge erred: by failing to address whether Mrs. Bentley had consented to the prodding and prompting that preceded the process of feeding; by putting the onus of proving consent on Mrs. Bentley and not on the Respondents and by failing to find that in absence of consent, the prompting and prodding amounts to battery under the common law.

Decision and Reasoning

The court dismissed the appeal. The court held that the trial judge correctly addressed the question of consent by finding that Mrs. Bentley's behaviour of opening her mouth to receive food when prompted amounted to a valid consent. This was a valid defence to battery. The court also emphasised on the trial court's observation that the written directive of 1991 was unclear and ambiguous not compliant with applicable statutes and hence could not be given effect to.

The court further held that the trial judge did not impose a burden on Mrs. Bentley's family to prove lack of consent. Instead, the trial judge had considered the evidence on record and expert opinion and then found that that they had not rebutted the presumption of Mrs. Bentley's capacity to consent.

The court acknowledged the family's desires to abide by Mrs. Bentley's wishes. However, the court noted that caregivers must carry out a patient's current wishes, regardless of prior directives.

Decision Excerpts

"Persons who wish to make provision for their care and decision-making in their declining years should not only record their wishes clearly, but also obtain legal advice as to what exactly can be accomplished by so-

called “living wills”, representation agreements, advance directives and related appointments.” (Para 6)

“I cannot agree that the chambers judge failed to address the question of Mrs. Bentley’s consent to the “prompting” that precedes her being fed by her caregivers. He clearly found that she is consenting when she opens her mouth to receive food or water. In law, such consent is a complete defence to the very technical battery that might otherwise exist. This consent arises in the present, rather than in any previous written instruction, and as we have seen, Mrs. Bentley’s previous written directives were not effective as a consent to the withdrawal of food and water.” (Para 18)

“It should come as no surprise that a court of law will be assiduous in seeking to ascertain and give effect to the wishes of the patient in the ‘here and now’, even in the face of prior directives, whether clear or not. This is consistent with the principle of patient autonomy that is also reflected in the statutes...”. (Para 17)

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