



E. (Mrs.) v. Eve

[1986] 2 S.C.R. 388

Country: Canada

Region: Americas

Year: 1986

Court: Supreme Court

Health Topics: Informed consent, Mental health, Sexual and reproductive health

Human Rights: Freedom from discrimination, Right to bodily integrity

Facts

Eve was a mentally disabled young woman suffering from a condition that made it extremely difficult for her to communicate with others. She was not capable of understanding the consequential relationship between intercourse, pregnancy and birth. Mrs. E, her mother, was concerned that Eve might innocently become pregnant, which would mean that she, an elderly woman, would have to care for her daughter's child. She therefore sought from the Supreme Court of Prince Edward Island a declaration that Eve was mentally incompetent pursuant to the Mental Health Act, appointment of herself as committee of Eve, and authorization for a tubal ligation for Eve.

The first two requests were granted, but the third request was denied on the ground that substitute decision makers could not consent to non-therapeutic surgical procedures. Mrs. E appealed. The Court appointed the Official Trustee as guardian ad litem for Eve and allowed the appeal. Eve was made a ward of the Court pursuant to the Mental Health Act for the sole purpose of using the Court's parens patriae jurisdiction to authorize the sterilization, and a hysterectomy was later ordered. Eve's guardian ad litem was granted leave to appeal the subsequent authorization of a hysterectomy to the Supreme Court. Several organizations representing mentally disabled persons and public officials were allowed to intervene. The Appellant claimed that the right to liberty and security in section 7 of the Canadian Charter of Rights and Freedoms protected Eve's right to procreate.

Decision and Reasoning

The Court allowed the appeal and refused to grant consent to the sterilization procedure.

It held that its power to appoint someone to consent to sterilization on behalf of a mentally incompetent person was not granted by provincial legislation, as both the Mental Health Act and the Hospital Management Regulations regulated hospital management, not the rights of individuals.

Nor could the Court provide substitute consent through its parens patriae jurisdiction. Jurisdiction for a non-therapeutic medical procedure was founded on necessity; it gave the Court the ability to act for the protection and in the best interest of those unable to care for themselves. However, non-therapeutic sterilization without consent was a grave intrusion on a person's rights and resulted in certain physical damage, while its advantages were highly questionable. It could therefore never safely be determined that such a procedure would be for the benefit of a mentally incompetent person. Accordingly, sterilization should not ordinarily be granted under the parens patriae jurisdiction.

The Court therefore could not substitute its consent to such a procedure for Eve's. The Court could not grant consent to a non-therapeutic procedure unless that procedure was demonstrated to be in the best interests of the incompetent adult. The procedure could not be for the benefit of others. This burden of proof lay on those who sought to have it performed, and should be considered very cautiously. In this case, there was no evidence to indicate that failure to perform the operation would have any detrimental effect on Eve's physical or mental health. The Court therefore could not authorize it.

The Court further considered that the Canadian Charter of Fundamental Rights and Freedoms did not affect the outcome of this case. In the Court's opinion, the right to liberty and security of person protected in s. 7 only provided a remedy to protect individuals against laws or other state action that deprive them of liberty, and was not broad enough to cover Eve's case. The Court also dismissed the argument that the right to equality under s. 15 of the Charter required a method for the mentally incompetent to obtain non-therapeutic

sterilizations on the same basis as the mentally competent. Section 15 was inapplicable here because the decision made by a Court's substitute consent was not the decision of the mentally incompetent person.

Decision Excerpts

“Nature or the advances of science may, at least in a measure, free Eve of the incapacity from which she suffers. Such a possibility should give the courts pause in extending their power to care for individuals to such irreversible action as we are called upon to take here. The irreversible and serious intrusion on the basic rights of the individual is simply too great to allow a court to act on the basis of possible advantages which, from the standpoint of the individual, are highly debatable. Judges are generally ill-informed about many of the factors relevant to a wise decision in this difficult area. They generally know little of mental illness, of techniques of contraception or their efficacy. And, however well presented a case may be, it can only partially inform.” Para. 88.

“The importance of maintaining the physical integrity of a human being ranks high in our scale of values, particularly as it affects the privilege of giving life. I cannot agree that a court can deprive a woman of that privilege for purely social or other non-therapeutic purposes without her consent. The fact that others may suffer inconvenience or hardship from failure to do so cannot be taken into account. The Crown's parens patriae jurisdiction exists for the benefit of those who cannot help themselves, not to relieve those who may have the burden of caring for them.” Para. 92.

“The court undoubtedly has the right and duty to protect those who are unable to take care of themselves, and in doing so it has a wide discretion to do what it considers to be in their best interests. But this function must not, in my view, be transformed so as to create a duty obliging the court, at the behest of a third party, to make a choice between the two alleged constitutional rights—the right to procreate or not to procreate—simply because the individual is unable to make that choice. All the more so since, in the case of non-therapeutic sterilization as we saw, the choice is one the courts cannot safely exercise.” Para. 99.

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