Chicago-Kent Law Review

Volume 43 | Issue 1 Article 16

April 1966

Constitutional Law - Religious Liberty - Compulsory Medical Treatment against the Will and Religious Beliefs' of a Patient Violates the Due Process Clause of the Fourteenth Amendment

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DISCUSSION OF RECENT DECISIONS

CONSTITUTIONAL LAW—RELIGIOUS LIBERTY—COMPULSORY MEDICAL TREATMENT AGAINST THE WILL AND RELIGIOUS BELIEFS OF A PATIENT VIOLATES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.—In the case of *In re Estate of Brooks*, 32 Ill. 2d 361, 205 N.E.2d 435 (1965), the Supreme Court of Illinois was confronted with the question of whether an otherwise competent adult, without minor children, who has become incompetent due to a physical and mental weakening brought on by approaching death, can be judicially compelled to accept treatment (in the case under discussion, a blood transfusion) under court order, despite the fact that such treatment would be against her will and religious convictions; and that for a considerable time prior to such treatment, the adult had refused to accept it, fully aware that such refusal would result in death. The court held that to judicially compel such treatment, under the circumstances, would be an unconstitutional infringement of the religious guarantees of the First Amendment to the Constitution of the United States, as made applicable to the states by the Due Process Clause of the Fourteenth Amendment.

Bernice Brooks had entered the McNeal General Hospital in Chicago, for treatment of a peptic ulcer. Her attending physician had been repeatedly informed during a prior two year period that to receive blood transfusions would be a violation of her religious and medical convictions.[1] Mrs. Brooks, her husband, and their two adult children were members of the Jehovah's Witnesses religious sect. Mrs. Brooks and her husband had signed a document releasing the attending physician and the hospital from any civil liability that could result from an omission of the administration of blood transfusions, and, in return, Mrs. Brooks was assured that there would be no further attempts to change her mind. Nevertheless, the attending physician, several assistant State's attorneys, and the public guardian's attorney of Cook County, Illinois, petitioned the probate division of the circuit court to appoint the public guardian as conservator[2] of the person of Mrs. Brooks and also requested an order authorizing the conservator thus appointed to consent to the administration of a blood transfusion to Mrs. Brooks: all this being done without notice to any member of the Brooks family. As a result of this petition a conservator was appointed, the blood transfusion was consented to by the conservator and the treatment was successfully accomplished.

Mrs. Brooks and her husband then appealed directly to the Illinois Supreme Court from the order of the probate division of the Circuit Court of Cook County, seeking to have all orders of the conservatorship proceed-

1 For a brief discussion of appellants' religious beliefs and foundation thereof, see *In re* Estate of Brooks, 32 Ill. 2d 361, 362-3, 205 N.E.2d 435, 436 (1965).

2 "CONSERVATOR. A guardian; protector; preserve." Black, Law Dictionary (4th ed. 1951).

ing expunged and the petition dismissed. The Constitution of the State of Illinois allows for a direct appeal from a circuit court of the State to the Illinois Supreme Court in cases in which a question arising out of either the Constitution of the United States or the Constitution of Illinois is presented.[3]

The appellees first contended that as the blood transfusion had already been given, the conservator discharged, and the estate closed, the cause had thereby become moot and the appeal should be dismissed. The court rejected the contention although it recognized the general rule that a moot case will be dismissed.[4] The court felt that the issues involved brought this case within the exception to the general rule that an appeal will not be dismissed when the moot issue is of substantial public interest.[5]

The appellants' main contention was that a blood transfusion could not be judicially forced upon her under the circumstances.

The court acknowledged the principle that the guarantees set out in the First Amendment to the United States Constitution are embraced within the Fourteenth Amendment and are thereby made applicable to the States.[6] Under the Fourteenth Amendment no State may deprive a person of life, liberty or property without due process of law. It follows, therefore, that a State may deprive a person of certain religious rights or freedoms, provided that the State acts within the bounds of due process of law.

While a person has a right to freedom of religion, the States have a right to protect the public welfare, health or morals. Thus, two conflicting interests are presented: the individual's right of freedom of religion, and the States' right to protect the public welfare, health, and morals.

The court noted that the First Amendment of the United States Constitution embraced two factors: the freedom of religious thought, which in no way could be regulated, and the freedom of action in relation to religion which could be regulated for the protection of society.[7]

The appellees urged that society has a substantial interest in preserving the lives of its citizens and that this interest is of greater importance than appellant's right to choose between life and death because of a religious conviction, and thus its act was not unreasonable, arbitrary, or capricious. To support this conclusion the appellees relied upon a number of cases

[3] Ill. Const. art. VI, § 5.

[4] People v. Redlich, 402 Ill. 270, 83 N.E.2d 736 (1949).

[5] In determining whether a moot issue is of substantial public interest, the public or private nature of the issue, the desirability of a determination for the guidance of public officials, and the likelihood of a recurrence of the issue are factors which are taken into consideration. People *ex rel.* Wallace v. Labrenz, 411 Ill. 618, 104 N.E.2d 769 (1952).

[6] Cantwell v. Connecticut, 310 U.S. 296, 60 Sup. Ct. 900 (1940); School District of Abington Township v. Schemp, 374 U.S. 203, 83 Sup. Ct. 1560 (1963).

[7] Cantwell v. Connecticut, *supra* note 6.

involving compulsory vaccinations,[8] the proscription of polygamous marriages,[9] the proscription of religious rituals involving snake handling,[10] the guardian consent to a transfusion for a minor child of the Jehovah's Witnesses,[11] and the judicially compelled blood transfusion to an adult of the Jehovah's Witnesses who was quick with child.[12] The court, however, felt that these were not controlling over the issue, as in each case society had an interest to protect and could, within the bounds of due process of law, deprive the persons involved therein of their rights to freedom of religion. Hence, in each of these cases the right of society to protect the public welfare, health or morals was a right superior to the right of the individual to freedom of religion.

The court, after dispensing with these cases said;

> It seems to be clearly established that the First Amendment of the United States Constitution as extended to the individual States by the Fourteenth Amendment to that Constitution, protects the absolute right of every individual to freedom in his religious belief and the exercise thereof, subject only to the qualification that the exercise thereof may properly be limited by governmental action where such exercise endangers, clearly and presently, the public health, welfare or morals. Those cases which have sustained governmental action as against the challenge that it violated the religious guarantees of the First Amendment have found the proscribed practice to be immediately deleterious to some phase of public welfare, health or morality. The decisions which have held the conduct complained of immune from proscription involve no such public injury and no danger thereof.[13]

Proceeding to the facts of the *Brooks* case the court found that the appellant's beliefs did not present a clear and present danger to society and therefore an infringement upon these beliefs was unconstitutional. In arriving at this conclusion the court stated:

> Applying the constitutional guarantees and the interpretations thereof heretofore enunciated to the facts before us we find a competent adult who has steadfastly maintained her belief that acceptance of a blood transfusion is a violation of the law of God. Knowing full well the hazards involved, she has firmly opposed acceptance of such transfusions, notifying the doctor and hospital of her conviction and desires, and executing documents releasing both the doctor and the hospital from any civil liability which might be thought to result from a failure on the part of either to

8 Jacobson v. Massachusetts, 197 U.S. 11, 25 Sup. Ct. 358 (1905).

9 Reynolds v. United States, 98 U.S. 145 (1879); Davis v. Beason, 133 U.S. 333, 10 Sup. Ct. 299 (1890).

10 Lawson v. Commonwealth, 291 Ky. 437, 164 S.W.2d 972 (1942); Harden v. State, 188 Tenn. 17, 216 S.W.2d 708 (1948).

11 People *ex rel.* Wallace v. Labrenz, 411 Ill. 618, 104 N.E.2d 769 (1952).

12 Application of President and Directors of Georgetown College, Inc., 331 F.2d 1000 (D.C. Cir. 1964).

13 *In re* Estate of Brooks, 32 Ill. 2d 361, 372, 205 N.E.2d 435, 441-2 (1965).

> administer such transfusions. No minor children are involved. No overt or affirmative act of appellants offers any clear and present danger to society—we have only a governmental agency compelling conduct offensive to appellant's religious principles. Even though we may consider appellant's beliefs unwise, foolish or ridiculous, in the absence of an overriding danger to society we may not permit interference therewith in the form of a conservatorship established in the waning hours of her life for the sole purpose of compelling her to accept medical treatment forbidden by her religious principles, and previously refused by her with full knowledge of the probable consequences. In the final analysis, what has happened here involves a judicial attempt to decide what course of action is best for a particular individual, notwithstanding that individual's contrary views based upon religious convictions. Such action cannot be constitutionally countenanced.[14]

The orders of the probate division of the Circuit Court of Cook County were accordingly reversed.

So, for the first time a court was presented with a set of facts which would allow a decision that a person's freedom in his religious beliefs and the exercise thereof would allow such person to choose between life and death by an act of omission provided such action is based upon religious beliefs and does not present a clear and present danger to the health, welfare or morals of society. Previous cases with similar facts had been decided contra on the basis of a clear and present danger to society, and those concurring in legal conclusion were not cases wherein a life or death issue was presented.

However, the *Brooks* case presented a factual situation in which the court felt that the death of one person, without obligations to society, did not of itself present a danger to society. Under these circumstances a person's desire to conform to his religious beliefs, regardless of impending death, has found support in a high State court. No matter how foolish a person's religious beliefs may be generally thought to be, they may not be overriden by a judicial order compelling the acceptance of medical treatment unless a rejection of it presents a clear and present danger to society.

Unfortunately the problem may become one of an interpretation of what constitutes a clear and present danger to society. The Illinois Supreme Court has decided that the death of one person does not present a danger to society, absent the passing of any burden onto that society. On the other hand, those courts which find it disagreeable to allow a person to choose death may employ a liberal attitude in construing what constitutes a clear and present danger, and indeed may do so to the point of negating *In re Estate of Brooks* and its effect. While the decision in the *Brooks* case is proper from a legal standpoint, it is difficult to predict its effect on future litigation. Perhaps the most that can be said on the point is that the *Brooks*

[14] *Id.* at 372-3; 205 N.E.2d at 442.

case has established another limitation on the power of the courts to interfere with the individual's choice between life and death—a limitation which will undoubtedly be strictly and narrowly construed.

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ESCHEAT—PROPERTY SUBJECT TO ESCHEAT—RIGHT TO ESCHEAT A DEBT ACCORDED TO STATE OF CREDITOR'S LAST KNOWN ADDRESS.—In the recent case of *Texas v. New Jersey*, 379 U.S. 674, 85 Sup. Ct. 626 (1965), the United States Supreme Court was confronted with the problem of whether the right to escheat a debt should be accorded to the state having the most "contacts" with the debt, the state of the debtor's incorporation, the state where the debtor's principal offices were located, or the state of the creditor's last known address.

In the case under discussion, the plaintiff, Texas, brought an action against New Jersey, Pennsylvania, and the Sun Oil Company seeking an injunction and declaration of rights for the purpose of determining which state could acquire title to certain abandoned personal property through escheat. The property in question consisted of various small debts[1] amounting to about $26,000 which had accumulated on Sun's books over a period of seven to forty years prior to the institution of this action. The debts resulted from the failure of creditors to claim or cash checks and were recorded on the books in Sun's two Texas offices.

The case was brought directly before the United States Supreme Court under Art. III, § 2 of the United States Constitution which grants the Supreme Court original jurisdiction in cases "in which a state shall be a party. . . ." Previous suits had been brought by debtors who sought a declaratory judgment when certain property was escheated by a particular state and they feared other states might later assert a right to escheat the same property.[2] But this was the first time that more than one state had been made a party to the action.

Another state, Florida, was allowed to intervene when it asserted a right to escheat that portion of the property owing to persons whose last known address was in Florida.[3] The Court assigned a master to hear the case and to make appropriate reports.[4]

1 Ely, *Escheats: Perils & Precautions*, 15 Bus. Law 791, 793-4 (1960), illustrates the extent to which intangible personal property is today subject to escheat.

2 Security Savings Bank v. California, 263 U.S. 282, 44 Sup. Ct. 108 (1923); Anderson National Bank v. Luckett, 321 U.S. 233, 64 Sup. Ct. 599 (1943); Standard Oil Co. v. New Jersey, 341 U.S. 428, 71 Sup. Ct. 822 (1950).

3 373 U.S. 948, 83 Sup. Ct. 1677 (1962). Illinois, which claimed no property involved in this case, also sought to intervene to urge that the right to escheat a debt should depend upon the laws of the state in which the debt was located. Leave to intervene was denied. 372 U.S. 926, 83 Sup. Ct. 1108 (1962).

4 372 U.S. 926, 83 Sup. Ct. 869 (1962).