Max Planck Institute
for Social Anthropology
Department 'Law & Anthropology'

Assessing Capacity to Refuse Medical Treatment on Religious Grounds

Question(s) at stake:

1) Whether a court can authorize medical personnel to administer medical treatment to an adult patient who is not of unsound mind and has refused such treatment on religious grounds. 2) Whether a mother's constitutional rights of autonomy, self-determination, and free practice of religion would prevail over the interests of the child under the Constitution.

Outcome of the ruling:

The Court affirmed that the right of a properly informed adult with full capacity to refuse medical treatment, for religious or other reasons, was constitutionally protected.

The question of balancing the constitutional rights of a new-born child against the mother's constitutional rights of autonomy, self-determination, and free practice of religion was moot as the refusal of a blood transfusion was deemed to be invalid in this case.

Topic(s):

- Hospitals and Healthcare

Keywords:

- Blood transfusion
- Childbirth
- Freedom of thought, conscience and religion
- Patient's rights
- Personal autonomy

- Urgent medical interventions

Tag(s):

- Capacity to consent
- Jehovah's Witnesses
- Bodily integrity

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Country:

Ireland

Official citation:

Fitzpatrick and Ryan v F.K. and the Attorney General [2008] IEHC 104

Link to the decision:

https://www.courts.ie/acc/alfresco/ba549670-c566-4a4b-87d8a9379d9d6b34/2008_IEHC_104_1.pdf/pdf#view=fitH

ECLI:

No ECLI number / ECLI number unknown

Date:

25 April 2008

Jurisdiction / Court / Chamber:

High Court

Remedy / Procedural stage:

Plenary hearing seeking injunctive and declaratory relief.

Previous stages:

Ex parte order made by Judge Abbott in the High Court on 21 September 2006.

Subsequent stages:

None

Branches / Areas of law:

Constitutional law, human rights law, medical law

Facts:

On 21 September 2006, K, the first named defendant, suffered a massive post-partum haemorrhage shortly after giving birth in a maternity hospital in Dublin. As the medical staff prepared to give her an urgent blood transfusion, they were informed that K refused to provide consent due to her religious beliefs as a Jehovah's Witness. K was a foreign national from the DRC who spoke French and very little English. She had a female birth partner, F, who acted as a translator and was present throughout the birth and the subsequent post-partum emergency. F was an African woman from Angola who had been granted asylum in the State a few years previously.

Prior to the birth, K had attended several appointments at the maternity hospital and registered her religion as "Roman Catholic". At the antenatal booking appointment, K had a private interview with a midwife conducted through the medium of a telephone interpreter. K confirmed her details, including her medical history and that her religion was Roman Catholic. Furthermore, K named F as her "next of kin" but failed to disclose that F was related to her by marriage; F was the wife of K's husband's brother. K also signed a consent form to have blood samples taken from her, which were taken subsequent to the interview. K further misled the medical personnel in stating that her husband was not in the State and that she lived alone. In the aftermath of giving birth, K's treating medical practitioners feared that she would die due to a loss of blood and, on several occasions, requested permission to give her a blood transfusion. Crucially, there was doubt as to whether she had the capacity to understand the seriousness of the consequences of refusal, and therefore a real concern arose as to whether her

refusal was fully informed. Based on K's misrepresentations, the medical personnel believed that her new-born child would effectively be abandoned in the State if she died. K was stabilized using artificial products, however, there was a real risk that without a blood transfusion she would die if she began to bleed again.

The Master of the maternity hospital responded to this emergency by making an application to the High Court for an *ex parte* order permitting the hospital to give a blood transfusion to K, however he omitted to notify K. The Master is the most senior obstetrician in the hospital and has ultimate responsibility for the patients being treated there. The emergency hearing took place within hours of K's post-partem haemorrhage. Judge Abbott in the High Court made an order authorizing the hospital to give all appropriate medical treatment to K and other ancillary procedures including a blood transfusion and clotting agents. Judge Abbott held that although K was competent, her wishes ought to be overridden in the interests of her child, in circumstances where her child would be left abandoned in the State should she die. Upon return to the hospital, the Master reviewed K and concluded that a blood transfusion remained necessary. K reiterated her refusal, however she was sedated and given a blood transfusion.

This action arises wherein the Master of the hospital, as the first named plaintiff, and the Secretary/Manager of the hospital, as the second named plaintiff, sue in their respective capacities. The Attorney General was joined in these proceedings to respond to questions regarding the interpretation of certain constitutional provisions. The plaintiffs, as representatives of the hospital, issued a plenary summons seeking an injunction in similar terms to the *ex parte* order. A declaration was sought to state that the hospital was entitled to apply to court for the injunction by virtue of the Constitution, and that the court was entitled and/or obliged to grant that relief. Furthermore, a declaration was sought to state that K's rights under the Constitution must be overridden by the State's duty to safeguard the constitutional rights of K's child.

K brought a counterclaim seeking declarations that:

1. the plaintiffs violated her constitutional rights in making an *ex parte* application for an order authorizing the violation of her bodily integrity and autonomy when she was a competent adult;
2. that the application for the *ex parte* order and the administration of a blood transfusion without her consent were incompatible with the European Convention on Human Rights.

K sought damages for assault, trespass to the person, and breach of her rights under the Constitution and the European Convention on Human Rights.

Ruling:

A declaration was granted stating that the plaintiffs had acted lawfully in sedating and administering a blood transfusion and other blood products to K after the making of the *ex parte* order. There was objective evidence that during the relevant period K did not have the capacity to make a valid refusal to accept the blood transfusion.

As K's refusal of a blood transfusion was not valid, the question of balancing the rights of her new-born child under the Constitution against her constitutional rights of autonomy, self-determination, and free practice of her religion was moot. That question arose only because K had misrepresented the facts about her family circumstances to the medical personnel.

K's counterclaim was dismissed, and the Court refused to grant the injunctive relief as sought by the plaintiffs as such relief was no longer necessary.

Regarding capacity:

-There is a presumption that an adult patient has the capacity to make a decision to refuse medical treatment, but that presumption can be rebutted.

-A decision to refuse life-saving treatment must represent the patient's independent decision and a doctor or court evaluating capacity must be satisfied that the patient's will was not overborne in such a way that the refusal would be deemed invalid.

Regarding freedom of religion:

-The Court noted that the test for determining capacity would be fulfilled if a patient assimilated and believed the information provided by his or her doctors, but nonetheless rejected treatment on the basis of a religious conviction.

Main quotations on cultural or religious diversity:

- “Indeed, I understood counsel for the plaintiff to accept that certain tenets of the Jehovah’s Witness faith, which he suggested were factors to be taken into account in determining Ms. K’s capacity, principally, disfellowship and disassociation, are protected by Article 44, in the same way as such practices are protected by the First Amendment of the United States Constitution, as was held by the US Court of Appeals for the Ninth District in *Paul v. Watch Tower Bible and Tract Society of New York*, Inc. 819 F. 2d 875.” (para. 25)
- “It is possible that in a particular case a court might conclude that the decision of a Jehovah’s Witness to execute an advance directive or, in particular circumstances, to refuse a life-saving blood transfusion was motivated by peer pressure or fear of social or economic deprivation due to disfellowship or disassociation to the extent that the decision was not voluntary. However, for a court to have regard to such factors, in my view, they would have to be specifically pleaded (cf O. 19, r. 5 of the Rules), and there would have to be evidence from which the court could conclude that the decision was not a voluntary decision. Those matters were not pleaded in this case and, accordingly, are not issues. Nonetheless, I think it is fair to record that while that Ms. K was cross-examined in relation to her perceived dependence at the time on members of the Jehovah’s Witness faith in this jurisdiction, I am satisfied that one could not conclude on the evidence that her decision was motivated by fear of economic deprivation.” (para. 80)
- “It is noteworthy that, while there have been many cases in which the issue as to undue influence of a family member of a particular faith, for example,

of the Jehovah's Witness faith, over a patient refusing life-saving treatment has arisen, in none of the authorities involving an adult patient to which the court has been referred was the issue of the influence of the sanctions imposed by a particular faith explored in the context of whether such a decision of a patient was voluntary. Every case must be decided on its own facts. I am satisfied that the practices and sanctions of the Jehovah's Witness religion were not, and could not properly have been, in issue in the evaluation of the quality of Ms. K's refusal on 21st September, 2006, either in the hospital or on the *ex parte* application. They were not raised on the pleadings and are not in issue now. In short, in my view, no issue as to the voluntariness or otherwise of Ms. K's refusal of a blood transfusion arises." (para. 81)

- "His [the Master's] evidence was that he could not envisage a circumstance in which a patient in the Hospital in that condition would not be transfused. His view was that, leaving aside the issue of religion, a transfusion was absolutely necessary." (para. 147)
- "Ms. K testified in French. Even with a professional interpreter the process was difficult. On occasions during her cross-examination it was difficult to determine whether she was being evasive or whether she genuinely did not understand what was being put to her. It was put to Ms. K that, by falsely stating when she was booking into the Hospital that she was as Roman Catholic, when in fact she was a Jehovah's Witness, she placed the Hospital in an impossible position when the emergency occurred. While acknowledging that maybe she put the Hospital in a difficult position, she quoted the following saying: 'The doctor advises and the patient decides'." (para. 168)
- "In later exchanges in which she was cross-examined about what she had learned at meetings in Kingdom Hall or from other members of the Jehovah's Witness faith about the medical benefits of blood transfusion and alternatives to it, Ms. K demonstrated an unwillingness to engage in an

exposition of what she had been taught and understood about those matters. Her response was: ‘We respect the law of God, we respect the principle of God’. On the first occasion on which she made that response she read the passage from the Bible, from Acts, which is the cornerstone of Jehovah’s Witness’s rejection of blood and blood products, the injunction ‘to keep abstaining from things sacrificed to idols, and from blood and from things strangled and from fornication’.” (para. 169)

- “When the question was pursued by reference to whether at Jehovah’s Witness meetings there was discussion that with very low blood count a blood transfusion is not medically necessary, Ms. K repeatedly gave the same response – that they were told to respect the principle, the law of what is said in the Bible. She qualified the response on a number of occasions by adding that it was a personal choice whether to respect the principle or not. On one occasion she added that it was a personal decision ‘because it is a question of life and death’.” (para. 169)
- “Ms. K did testify that the Elders tell the community that they are often situations that are very dangerous and she added that they are told that the person has to make his own personal decision and the decision is between the person and Jehovah. When Ms. K was questioned further as to whether members of the community are told that there are medical products which are alternatives to blood transfusion where the blood count is extremely low, she reverted to her reliance on the principles of the Bible and did not answer the question. I draw no inference from the foregoing exchanges as to what Ms. K was taught by the Elders of her church about the efficacy or otherwise of medical or other alternatives to blood transfusions. It may be that Ms. K did not understand that counsel for the plaintiffs was not trying to elicit information about the principles of her faith but was trying to ascertain what she was taught and had learned about the efficacy of various remedies in a situation where a patient’s blood count is low. However, she manifested a persistent unwillingness to open her mind to questions concerning her understanding of the medical realities of her case. Her demeanour gave

some insight as to why the Hospital personnel who were treating her on 21st September, 2006 would have harboured doubts about her understanding of the gravity of her condition." (para. 169)

- "In the course of cross-examination it was put to Ms. K that the Coke and tomatoes suggestion showed that she had no real medical understanding of the nature of the situation which confronted her on the morning. Her response was that she proposed those products because the doctors told her there was no other alternative and she proposed what she knew. She thought that Coke and tomatoes were going to be as effective to improve her low blood count as a blood transfusion, but 'not as fast as that', and it could help her 'little by little'. She stated that she understood the situation, that it was between life and death, so that she could not play around with the situation." (para. 170)
- "What the evidence shows is that the Master accepted Ms. K's assertion that, as a Jehovah's Witness, she was refusing a transfusion on religious grounds at face value. Consequently, she was not transfused and the Master's evidence was that she would not have been transfused except on the authority of a court order. [...] The main thrust of his evidence was that, having regard to all of the circumstances, he could not be certain that Ms. K had the capacity to refuse a blood transfusion." (para. 213)
- "A question which was explored in the evidence was whether a professional interpreter should have been brought in. The evidence reveals that some efforts were made to obtain a professional interpreter. Even if as *(sic)* professional interpreter had been available, I think it improbable that the Hospital personnel would have obtained any clearer picture of Ms. K's understanding of the gravity of the situation, because obviously the communication difficulties were not limited to linguistic difficulties." (para. 220)
- "I think it is only fair to record that notwithstanding the issues as to her credibility which arose in the course of the hearing and despite some

elements of melodrama, for example holding the Bible, in the presentation of her evidence, Ms. K's evidence did not raise any doubts as to the strength of her conviction that to accept a blood transfusion would transgress the law of God." (para. 223)

- "At the beginning of his testimony the Master emphasised that the Hospital is a non-denominational hospital which accommodates patients from different ethnic backgrounds and of different religious beliefs. I am satisfied on the evidence that it is a hospital in which the wishes of patients of the Jehovah's Witness faith who do not wish to be transfused are respected. The situation in which Ms. K was transfused against her wishes unfortunately was of her own making." (para. 224)

Main legal texts quoted in the decision:

Relevant provisions of the Irish Constitution:

- Article 40
- Article 44

Cases cited in the decision:

Relevant Irish case law:

- *G. v An Bord Uchtála* (Supreme Court, 19 December 1978), [1980] IR 32
- *In re a Ward of Court (withholding medical treatments) No. 2* (Supreme Court, 27 July 1995), [1996] 2 IR 79
- *J.M. v St Vincent's Hospital* (High Court, 24 October 2002); [2003] 1 IR 321
- *North Western Health Board v H.W. and C.W.* [2001] IESC 90

Relevant UK case law:

- *In re B. (Adult: refusal of medical treatment)* [2002] 2 All ER 449
- *In re C. (Adult: refusal of medical treatment)* [1994] 1 All ER 819
- *In re M.B. (Medical Treatment)* [1997] 2 FLR 426

- *In re T. (Adult: refusal of medical treatment)* [1992] 4 All ER 649

Relevant US case law:

- *Paul v Watch Tower Bible and Tract Society of New York Inc.* [1987] 819 F. 2d 875

Relevant Canadian case law:

- *Malette v Shulman* [1990] OR (2d) 417

Commentary

Assessing Capacity to Refuse Medical Treatment on Religious Grounds

This was the first time that an Irish court was asked to decide whether a court was entitled to intervene and make an *ex parte* order authorizing a blood transfusion to be administered to a competent adult, notwithstanding that he or she had expressly refused a blood transfusion. Judge Laffoy carried out a detailed analysis of the law concerning consent to medical treatment. Early in the judgment, Judge Laffoy cited with approval the judgment of the Supreme Court in the case of *In re a Ward of Court (withholding medical treatment) (No. 2)* [1996] 2 IR 79 and set out the following quotation: “The right to life is the pre-eminent personal right. The State has guaranteed in its laws to respect this right. The respect is absolute. This right refers to all lives – all lives are respected for the benefit of the individual and for the common good. The State’s respect for the life of the individual encompasses the right of the individual to, for example, refuse a blood transfusion for religious reasons. In the recognition of the individual’s autonomy, life is respected.” (p.160)

Judge Laffoy noted that the substance of that part of the judgment had been incorporated in *A Guide to Ethical Conduct and Behaviour* issued by the Irish Medical Council (6th edn, 2004) and explicitly provided that a competent adult patient has the right to refuse treatment. It also detailed that in emergency circumstances where consent cannot be obtained, such as where a patient may be unconscious, a doctor may provide necessary treatment to preserve the

patient’s life or health.

In addressing the “capacity question”, authorities from other jurisdictions namely Canada and the United Kingdom, were considered. Of significance, Judge Laffoy opined that cases involving minors as patients were of little assistance as “they raise distinct issues which do not arise in cases involving competent adult patients”. (para. 38) In this regard it is useful to note the decision in *North Western Health Board v H.W. and C.W.* [2001] IESC 90 [INSERT LINK to CUREDI021IE003] wherein the Supreme Court held that it had not been established that the refusal by the parents to consent to a diagnostic medical test rendered the case as “exceptional” on the grounds of a failure of parental duty towards the child for physical or moral reasons, and therefore State intervention was not required to vindicate the child’s constitutional rights. Of interest also is that Judge Laffoy expressly noted the practical obstacles present regarding communication with K. Despite making efforts, the medical personnel failed to obtain a professional interpreter, however the Judge highlighted that the communication difficulties were not confined to linguistic issues and made an assessment that even with a professional interpreter it was likely that K’s understanding of the seriousness of the situation would not have been clearly established. In setting out a detailed account of the evidence given during the hearing, Judge Laffoy provides a valuable illustration of the practical difficulties facing medical personnel in such circumstances.

The Court had to navigate the practical implications of K’s medical treatment in light of her religious beliefs as a Jehovah’s Witness. Despite issues concerning her credibility and her misrepresentations to the hospital that her religion was Roman Catholic and that her husband was not in the State, Judge Laffoy nonetheless stated: “I think it is only fair to record that notwithstanding the issues as to her credibility which arose in the course of the hearing and despite some elements of melodrama, for example holding the Bible, in the presentation of her evidence, Ms. K’s evidence did not raise any doubts as to the strength of her conviction that to accept a blood transfusion would transgress the law of God”. (para. 223) Judge Laffoy also referred to the Master’s testimony in which he emphasized that the

hospital is a non-denominational hospital which accommodates patients from various ethnic backgrounds and of different religious beliefs. More specifically, Judge Laffoy noted that: “I am satisfied on the evidence that it is a hospital in which the wishes of patients of the Jehovah’s Witness faith who do not wish to be transfused are respected. The situation in which Ms. K was transfused against her wishes unfortunately was of her own making.” (para. 224)

Judge Laffoy acknowledged that this case raised important questions. The hearing, however, ran for thirty-seven days during which time clinicians and medical personnel had to spend a considerable amount of time in court. Judge Laffoy suggested that guidance and assistance should be provided to assist medical and legal personnel in the future which included:

-Maternity hospitals should have guidelines for the management of haemorrhages in women who refuse blood transfusions.

-When a woman is booking into a maternity hospital, the information sought should specifically address whether the patient would accept a blood transfusion in an emergency situation.

-The Irish Medical Council Guidelines should specify how capacity to give a valid refusal to medical treatment is to be assessed. Furthermore, instruction is advisable concerning advance directives to refuse medical treatment.

-A High Court Practice Direction should set out the procedure to be followed in relation to urgent applications in case of medical emergencies for authority to administer blood transfusions and other medical procedures, distinguishing the three situations which may arise:

1. where an adult patient is incompetent;
2. where the patient is a minor and the parents are refusing consent;
3. where the patient is an adult and competent, but a doubt arises as to his or her capacity to refuse treatment.

The current situation in Ireland is that the Health Service Executive (HSE), which is responsible for the provision of health and personal social services in Ireland, has drafted *Essential Practice Points* concerning the medical treatment of Jehovah's Witnesses. The seven identified Practice Points are as follows: 1. Profile of Jehovah's Witnesses in Ireland; 2. Religious contacts and religious practices; 3. Food and the content of medicine; 4. Blood transfusion and organ transplantation; 5. Death-related religious rituals; 6. Cleaning and touching the body; and 7. Initiation ritual/infant baptism. Each of these Practice Points provide essential guidance to healthcare staff in the provision of treatment to patients who are adherents of the Jehovah's Witness faith. There are also eight Hospital Liaison Committees in Ireland which provide support and guidance to a Jehovah's Witness undergoing a medical procedure and assist or mediate in the event of an emergency or challenging situation. The Hospital Liaison Committees comprise of specially trained Church ministers ("elders") who advise on the delivery of healthcare in a manner consistent with the beliefs of the faith, in addition to arranging for educational presentations for healthcare staff concerning the provision of medical treatment for Jehovah's Witness patients. Furthermore, the Hospital Liaison Committees provide information on the use of alternative non-blood medical management strategies, in addition to providing peer-reviewed medical research papers concerning such treatments. The Hospital Liaison Committees can also play a vital role in facilitating communication between medical staff and patients, including parents of a child patient of the Jehovah's Witness faith.

The guidance from the HSE is unequivocal in stating that: "Baptised Jehovah's Witnesses usually carry an advance care directive document, directing that no blood transfusions be given under any circumstances. This document releases the hospital from responsibility regarding the consequences of this decision. It also outlines their personal treatment choices regarding blood products and autologous (use of own blood) procedures. A copy of this document is generally lodged with the patient's G.P. Some Witness patients will refuse all blood products, others may accept some and not others. With regard to autologous

procedures (using a patient's own blood), some accept and some do not. It is important to discuss and clarify with each patient what blood products and procedures are personally acceptable". (www.hse.ie/eng/services/publications/socialinclusion/interculturalguide/jehovahswitnesses ill.html) The HSE has also issued *Additional Notes on Maternity and Paediatric Care – Jehovah's Witnesses* in which it is stated that: "With maternity care, it is advisable that the healthcare setting notes early in the care process that the mother is a Witness. Care issues, including anaesthesia, need to be discussed and agreements reached. Witnesses are likely to present medical personnel with a *Care Plan for Women in Labour* when they go to a hospital for maternity care. This document can also serve as a protocol".

(www.hse.ie/eng/services/publications/socialinclusion/interculturalguide/jehovahswitnesses

Guidance such as that provided by the HSE through the *Essential Practice Points* and *Additional Notes on Maternity and Paediatric Care – Jehovah's Witnesses* is of immense value for healthcare workers and faith adherents alike. These measures, in addition to the medical advances concerning the use of alternative non-blood medical management strategies, help to ensure that Jehovah's Witnesses can uphold the prescripts of their faith in the course of obtaining medical treatment. Additionally, these measures provide clarity to healthcare workers in respect of patient consent for medical treatment and this is particularly relevant during urgent medical interventions. Engagement and dialogue between the national healthcare provider and representatives advocating on behalf of faith adherents is to be welcomed as it is conducive to creating a framework that seeks to ensure that the provision of healthcare does not unnecessarily infringe upon a person's constitutionally protected right to freedom of religion, in addition to other constitutional rights.

Literature related to the main issue(s) at stake:

General legal literature on the topic:

- Davis, Lucy M. 2019. “The Right not to be Resuscitated? Do Not Attempt Resuscitation (DNAR) Orders and the Limits of the Legal Framework in Ireland”. *Hibernian Law Journal* 18 (1): 49-67.
- Donnelly, Mary. 2008. “The Right of Autonomy in Irish Law”. *Medico-Legal Journal of Ireland* 14 (2): 34-40.
- Gribow, Gina. 2013. “Forced Obstetrical Intervention: The Role of Religion and Culture, and the Woman’s Autonomous Choice”. *Hastings Women’s Law Journal* 24: 177-195.
- Ma’ayeh, Marwan and Nikhil Purandare, Michael Flanagan, Simon Ash, Michael Geary, Fionnuala Breathnach. 2013. “Ruptured Broad Ligament Ectopic Gestation in a Jehovah’s Witness with a Negative Pregnancy Test”. *Medico-Legal Journal of Ireland* 19 (1): 37-39.
- McMahon-Parkes, Kate. 2013. “Rationality, religion and refusal of treatment in an ambulance revisited”. *Journal of Medical Ethics* 39 (9): 587-590.
- Savulescu, Julian. 1998. “The Cost of Refusing Treatment and Equality of Outcome”. *Journal of Medical Ethics* 24 (4): 231-236.
- Sheikh, Asim A. 2008. “Issues of Capacity and Consent”. *Medico-Legal Journal of Ireland* 14 (2): 30–33.
- Willmott, Lindy. 2009. “Advance Directives Refusing Treatment as an Expression of Autonomy: Do the Courts Practise What They Preach?” *Common Law World Review* 38 (4): 295-341.
- Wilson, Kay and Penny Weller. 2011. “Benevolent Paternalism or a Clash of Values: Motherhood and Refusal of Medical Treatment in Ireland”. *Journal of Mental Health Law* 21: 108-119.

Materials relevant to the case:

- Health Service Executive. “Additional Notes on Maternity and Paediatric Care – Jehovah’s Witnesses”. <www.hse.ie/eng/services/publications/socialinclusion/interculturalguide/jehovahswitn

Health Service Executive. “Essential Practice Points: Jehovah’s Witnesses”. <www.hse.ie/eng/services/publications/socialinclusion/interculturalguide/jehovahswitnesse

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