

Medicolegal

Sterilisation of mentally handicapped woman

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The Court of Appeal's authorisation of an operation to sterilise a mentally handicapped girl of 17¹ provoked widespread media comment last week, and public concern prompted the Official Solicitor to seek leave to take the case to the House of Lords. If the case goes to the Lords a quick ruling will be necessary if the operation is to be carried out before the girl's 18th birthday on 20 May, when she will no longer be a ward of court.

The girl, known as Jeanette, with a mental age of 5 or 6, is incapable of understanding the procedure and therefore cannot give informed consent herself. In wardship the court can authorise anything it believes to be in the ward's best interests. But, as Lord Justice Dillon pointed out in the Court of Appeal, there is no power, either in any statute or at common law, to sanction such a procedure once she reaches the age of 18.

Previous case

Jeanette has been in the care of Sunderland Borough Council under a care order since she was 4. The local authority, therefore, has parental rights over her. But the right of a parent to consent to the carrying out of a non-therapeutic procedure on a child is uncertain. In a 1976 case, *Re D*, Mrs Justice Heilbron refused to authorise the sterilisation of a mentally handicapped 11 year old girl despite the mother's wishes that the operation should be carried out.² The local authority therefore took steps to have Jeanette made a ward of court and obtain the court's authorisation for the operation.

Prior approval of the court was not sought in the *D* case; the gynaecologist was ready to carry out the operation, but an educational psychologist, concerned at the decision, intervened and made the girl a ward of court. Before *Re D* sterilisation seems to have been carried out not infrequently: at least 36 girls under 18 were sterilised in England in 1973-4, according to an article in the *Journal of Medical Ethics* in 1975.³ Last week the Department of Health and Social Security said that around 90 sterilisations are performed each year on women aged under 19, although national figures for those aged under 18 and the reasons for the operations are not available.

But last week in the Court of Appeal Lord Justice Dillon said that there was no question of a natural parent, or a local authority with parental rights, seeking to have a sterilisation operation carried out on a minor without the leave of the court in wardship proceedings. Unless and until the House of Lords decides differently, therefore,

any parent or local authority seeking to have a mentally handicapped girl sterilised will first have to have her made a ward of court and then seek the court's consent.

Moreover, as the judgments in both this case and *Re D* make clear, sterilisation will be authorised only as a last resort. In the *D* case the girl's IQ was around 80, which would not necessarily have precluded her from raising a child, and there was medical evidence that her prospects could improve. It was possible that when she was older she would be able to understand the implications of the operation and make her own choice. Jeanette's case is very different: her level of intelligence is much lower and she would not be capable of looking after a baby. Moreover, any baby would have to be delivered by caesarean section, and there were fears that, with her high pain threshold, she would pull the stitches out of the wound.

In general, the law lords will hear only cases involving a point of law of public importance. The point of law in this case, according to the official solicitor, is whether it is an abuse of wardship jurisdiction to authorise the sterilisation of a girl within two months of her 18th birthday when if she were not mentally handicapped the court would not act.

Problems with adults

Wardship, where anyone with a sufficient interest can intervene and the court's powers have no precise limits, can overcome the difficulties of lack of consent for mentally handicapped minors. But what about the case with adults? It may be argued that sterilisation, as an irrevocable procedure, is undesirable and that a mentally handicapped girl who becomes pregnant can always have an abortion. But the gap in the law that leaves no one in a position to consent to sterilisation on a mentally handicapped adult also applies to abortion, though a doctor can act without consent in an emergency.

The Mental Health Act 1983 provides for the appointment of a guardian for a mentally impaired person over 16 (impairment is defined as being associated with "abnormally aggressive or seriously irresponsible conduct"), and section 8 gives the guardian power to require the patient to attend hospital for the purpose of medical treatment. But in the opinion of John Finch, senior lecturer in the faculty of law at Leicester University and member of the Mental Health Act Commission, this would not stretch to the power to consent to sterilisation or abortion. "It's a hole in the law," says David Venables, "which parliament is going to have to block up."

References

- 1 Anonymous. In *re B* (a minor) (sterilization). Law report. *The Times* 1987 March 17: 35 (col 1).
- 2 *Re D* (a minor) (1976) 1 All ER 326.
- 3 G Porter. Child sterilisation. *J Med Ethics* 1975;1:163.

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