AUTONOMY STRETCHED TOO FAR IN THE LIGHT OF THE APPROVAL OF EUTHANASIA FOR A 27-YEAR-OLD AUTISTIC ALBERTA WOMAN*

Abstract
Generally, autonomy refers to a person's right to whatever he/she believes in. In the medical parlance, patient autonomy is a well-known principle and it is also one of the views of the proponents of euthanasia and/ or assisted suicide in seeking for the legalization of the concept. While opponents believed strongly that a matured and sane person, no matter the sentiment involved, should be allowed to do whatever he/she likes with him/herself, including taking his/her own life. Opponents on the other hand believed life belongs to God and so no one is reserved the right to take or kill such life. More so when one has contributed nothing to the existence of the life sought to be taken. This present case therefore sets the ball in motion wherein a father has gone to court to challenge the basis for making her daughter qualified for euthanasia when the daughter is only mentally incapacitated. the decision of the court in allowing the euthanasia of the autistic woman, despite agreeing that the establishing law was faulty in some direction is examined and the implication of such ruling. This paper will, at the end show that legalizing or allowing euthanasia on the basis of autonomy coupled with denying parents the right to have a say on the issues bothering the life and death of their own is an autonomy stretched too far.

Keywords: Autonomy, Stretched Too Far, Euthanasia, Autistic, Woman

1. Introduction

Generally, patient autonomy can be described as the freedom to do something without being stopped by anyone. In other words, a person is said to have autonomy when he decides what happens to him. For instance, a matured and sane person may decide to be married or single. It is his or choice to get married or not to. These choices, no matter how bad it may appear in the eyes of the public must not be interfered with.[1] In medical ethics, patient autonomy is the right of patients to take decisions relating to one's health. Medical practitioners are bound to succinctly and carefully explain the medical procedures to the patients, tell them of the advantages and disadvantages of each medical procedure in order to guide them in making the right decision. It is important to note that patient autonomy will only happen when the patient is legally competent. However, the said right cannot be exercised by persons who are young or mentally incapacitated. Medical practitioners are required to evaluate a patient's capacity to make life and death decisions before allowing patients to exercise such right. However, when patients with legal disability are to take decisions, the next of kin is allowed to take decisions for them, it is however expedient to state at this point that insanity does not totally stop a patient from making decisions if the unsound state of mind did not affect his capacity to make such decision at the time of making it or if the decision is made during his lucid period.[2] It is in the light of the above, that this paper examines the decision of a judge of a Calgary court to approve euthanasia for an autistic Alberta woman in spite of her father's insistence that her daughter is not qualified for it based on the medical report tendered by the father in court. The paper will at the end show that when it comes to the issue of life and death, parents should be allowed to have a say in some special situations as this, notwithstanding the impaired nature of the person in question. But where opinion of the parents is jettisoned, as in this case, then same would amount to autonomy taking too far.

2. What Is Euthanasia?

According to the Encyclopaedia Britannica, 'euthanasia can be defined as the act or practice of painlessly putting to death persons suffering from painful and incurable disease or incapacitating physical disorder.'[3] To them euthanasia is also called mercy killing. In the words of the Black's Law Dictionary, euthanasia means 'the act or practice of painlessly putting to death persons suffering from incurable and distressing disease as an act of mercy.'[4] The Laber Cyclopaedia Medical Dictionary puts it this way 'an easy, quiet and painless death.'[5] It added that euthanasia involves the deliberate ending of the life of people with incurable or terminal illness of unbearable suffering. One remarkable point of note is that there is no dispute as to the origin of the word euthanasia, just as the dictionaries have stated above, virtually all authors and writers trace their definition to the ancient Greek, what however remained un answered and which this thesis shall provide answers to, is whether the literal definition of euthanasia in the ancient Greek terminology is the same with modern day usage? At this juncture it is important to examine definitions and terminologies put forward by some scholars.

***By Bashiru Adeniyi OMIPIDAN, LLB (Hons), BL, LLM, PhD,** Professor of Law, Skyline University, Kano**,** E-mail: dean.sls@sun.edu.ng; bashiruomis@unilorin.edu.ng, Phone No: 08033136829,
***Abdulazeez Hamza OKENE, LLB, BL, LLM, PGDE, PhD,** University of Ilorin, Ilorin, Nigeria**,** E-mail: abdulazeez.ho@unilorin.edu.ng, Phone No: 08036303166; and
***Ruqayyah Olaide ABDULAZIZ, LLB, BL, LLM,** University of Ilorin, Ilorin, Nigeria**,** E-mail: abdulaziz.ro@unilorin.edu.ng, Phone No: 08134764569

[1] Jay W. Marks, Definition of Patient Autonomy. https://www.rxlist.com/paient_autonomy/definition.htm accessed 1 April, 2024.
[2] Ibid
[3] The Encyclopedia Britannica <http://search.eb.com/eb/article-9071928> accessed 30 March, 2024.
[4] Black, H.C: *Black's Law Dictionary* (16th ed.) (U.S.A; St Paul Minn- West Publishing Co. 1991) 554.
[5] Laber, *Cyclopaedia Medical Dictionary*, Vol. 111 ed. (In 30 volumes Micropaedia, 1943-1974) 1006.

Puteri Nemie Jahn Kassim,[6]defines euthanasia with reference to the Oxford dictionary as 'the bringing about a merciful and painless death for persons suffering from an incurable and painful disease.' The learned professor went further to say that generally it refers to the means of inducing or bringing about a gentle and easy death or death without suffering.

3. Arguments in Favour of Autonomy

It is the contention of the proponent of euthanasia and assisted suicide that a person should be able to decide what is good for him or her. Although the principle of individual autonomy can be said to be more applicable to assisted suicide, same can still be used for both because in both situations the patient has an input into what is to happen to him or her except in situation where by such patient is in a vegetative state such that he or she cannot express his or her wishes. The argument is premised on the fact that the owner of life can decide what to do with such life including when and how to die.[7]

4. Argument Against Autonomy

The two most popular religions, Islam and Christianity remains the strongest opposer of the principle of autonomy. According to them, who is the creator of life? This is because creation belongs to the Almighty God[8]; this singular fact has not been disputed. Although this argument is the religious view point, one can keep religion out of it and apply a reasonable man's test as to who the creator of life is. Thus, if the answer to the above is God, then it means nobody has a right to take the life he or she cannot or has not created. It therefore follows that the reason for wanting to legalize euthanasia and assisted suicide does not hold water. Even the West particularly the Americans who seem to be at the fore front of the individual autonomy principle have not said somebody else created life. All they have been saying is that the owner of life should be allowed to decide what happens to such life. Can there ever be an owner of life without its creator? This research's answer is in the negative. The father of a 27-year-old woman who has been approved for Medical Assistance in Dying (MAID) has asked a Calgary judge to dig into the circumstances that led to two of three doctors approving his daughter's application.[9] A publication ban protects the identities of the parties and the medical professionals. The identity of the parties is protected and to be identified as follows: the daughter as M.V. [Defendant] and the father as W.V. [Plaintiff].[10]

5. Issue for determination

The sole issue for determination is whether the courts can step in when family members, with no legal standing, have concerns about the MAID approval process?

6. History of the Canadian Medical Aid in Dying Law

Canadian legislation on medical assistance in dying (MAiD) was introduced in June 2016, a year after *Carter v Canada*[11] concluded that the provisions in the *Criminal Code of Canada* criminalizing the assistance in another's suicide violated the *Canadian Charter of Rights and Freedoms.*[12] The resultant Bill C-14 attempted to balance the individual autonomy rights of eligible patients and the protection of persons who may be vulnerable, that is, people who could be subtly coerced into ending their lives.[13] The first Supreme Court of Canada case on MAiD was filed by Sue Rodriguez in 1993. Rodriguez, suffering from amyotrophic lateral sclerosis, argued that section 14 (criminalizing the consent to have death inflicted upon oneself) and section 24.1 (b) (criminalizing assistance in another's suicide) of the *Criminal Code* jointly violated three *Charter* rights,[14] (*Rodriguez v British Columbia* 1993), most notably Section 7 ('the right to life, liberty and security of the person') (*Canadian Charter of Rights and Freedoms* 1982). The court concluded that section 7 was infringed; however, it was saved by section 1 of the *Charter*, which allows rights to be limited if 'demonstrably justified in a free and democratic society.' In Canada, the test for determining if a limitation is demonstrably justified is the Oakes test, which requires that:

1. the goal of the *Charter* restriction be pressing and substantial;
2. the restriction be rationally connected to the law's purpose;
3. the restriction minimally impairs the violated *Charter* right; and
4. the restriction's benefits outweigh the costs (proportionality).[15]

---

[6] Puteri Nemie J. Kassim, *Law and Ethics relating to Medical Profession* (International Law book Services, 2007) 271-272.

[7] Battin M, *Last Least Worst Death, Essays in Bioethics on The End of Life* (New York, Oxford University Press, 1994).

[8] Late Sheikh Abdul Aziz Abdullahi bin Baz. (2007). <http://www.islaicvoice.com/july.97/news.html.> accessed 28 March, 2024.

[9] Alex Schadenberg; Father asks court to stop 27-year-old daughter's MAID death, review doctors' sign-off. *CBC News-March* 12, 2024 <https://ca.news.yahoo.com/father-asks-court-stop-27-003444543.html?guccounter=1> accessed 29 March, 2024.

[10] Ibid.

[11] *Carter v. Canada* (Attorney General). [2015]. SCC 5, [2015] 1 SCR 331; see also *Canada (Attorney General) v. E.F.* [2016]. ABCA 155.

[12] Canadian Charter of Rights and Freedoms. 1982. Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), c 11.

[13] Ricarda M. Konder and Timothy Christie, Medical Assistance in Dying (MAiD) in Canada: A Critical Analysis of the Exclusion of Vulnerable Populations Health Policy. 2019, 15(2): 28–38.

[14] *Rodriguez v. British Columbia (Attorney-General)* [1993]. 3 SCR 519.

[15] *Roe v Oakes.* [1986]. 1 SCR 103

In *Rodriguez*, the court ruled that a universal prohibition on MAiD was demonstrably justifiable as it served to protect the vulnerable. Rodriguez lost with a five-to-four ruling, and the sections of the *Criminal Code* remained unchallenged until the joint case of Lee Carter and Gloria Taylor was heard by the Supreme Court of Canada in 2015. Carter and Taylor sued for legally accessible MAiD, drawing on many elements of Rodriguez's case. This time, the section 7 infringement did *not* pass the Oakes test because of the reality that multiple other countries had implemented MAiD legislation since Rodriguez's case. The restriction therefore no longer satisfied the minimal impairment required thereby closely linking the concept of minimal impairment to the presence of pertinent legislation in other jurisdictions.[16] In the time between the *Carter* ruling and the proclamation of Bill C-14, MAiD was decriminalized but unregulated in Canada. When Bill C-14 was finally enacted in 2016, the following eligibility criteria were specified:

a. they [patients] are eligible – or, but for any applicable minimum period of residence or waiting period, would be eligible – for health services funded by a government in Canada;
b. they are at least 18 years of age and capable of making decisions with respect to their health;
c. they have a grievous and irremediable medical condition;
d. they have made a voluntary request for medical assistance in dying that, in particular, was not made as a result of external pressure; and
e. they give informed consent to receive medical assistance in dying after having been informed of the means that are available to relieve their suffering, including palliative care.'[17]

Furthermore, the bill deliberately deemed three important groups ineligible for MAiD: mature minors, patients wishing to access MAiD at the direction of an advance medical directive and patients with a mental illness as the sole underlying medical condition.

7. Application of the Canadian Medical Aid in Dying [MAID] Law

Currently, two doctors or nurse practitioners have to approve a patient for MAID. The medical practitioners must determine, through an assessment, that the person has a grievous and irremediable medical condition that causes intolerable and enduring physical or psychological suffering. It is important to state here that the initial requirement for Medical Aid in Dying [MAID], which is 'a reasonable foreseeability of natural death,' was repealed in 2021. So, the current position of the law is that people suffering solely from mental illness are excluded from accessing medical aid in dying [MAID].

8. The position of the plaintiff [W.V] who is the father of M.V.

Court of King's Bench Justice Colin Feasby heard that M.V. — who lives with her father — was approved in December. Her date to receive MAID was set for Feb. 1. The day before she was scheduled to die, W.V. was successful in seeking a temporary injunction, preventing M.V. from accessing MAID. *She has not submitted any medical documentation that could explain why she qualifies for MAID*. In a brief filed with the court, W.V. argued 'M.V. suffers from autism and possibly other undiagnosed maladies that do not satisfy the eligibility criteria for MAID.'

9. Arguments of Counsel to the defendant, [W.V].

In her own submission, M.V.'s lawyer Austin Paladeau argued that she's 'not trying to withhold or hide anything.' She stated further that her client is matured to make decisions for herself and so it is neither the father's business nor that of the public to question her decision in wanting to die via medical aid in dying [MAID]. It was also her view that the determination of eligibility for MAID, including whether an individual has capacity, should be left to the 'approved assessors.' She therefore urges the court to discountenance with the submission of the plaintiff's father. Submitting further, the lawyer to the plaintiff, Sarah Miller, described the situation as 'a novel issue for Alberta.' She opined further that by the 2021 medical history of M.V., which is currently before the court, and as written by a doctor at a neurology clinic who concluded M.V. required no follow-up and was 'normal' and sent her back to her family doctor, her daughter was not qualified for MAID, and that W. V's consent was impaired by her mental illness. She further contends that Miller also pointed out that on her initial MAID application, M.V. indicated her death had become 'reasonably foreseeable' yet she was approved as a 'track 2' MAID patient, which means death is not reasonably foreseeable. It was also her view that since 'AHS [Alberta Health Services] operate a MAID system with no formal legislation, no right of appeal process and no process of review, the judge should take a second look at the matter. It is on this premise that she finally submits by seeking that Judge 'Feasby' do a judicial review of M.V.'s MAID approval.

10. Court's Preliminary Findings

Judge Feasby heard that two doctors were initially approached by M.V. One agreed to sign off on approving her for MAID, the other denied the application. A third 'tie-breaker' doctor, as described by lawyers for Alberta Health Services, was then offered to the patient, in this case, M.V. The judge, in his preliminary findings, described the case as 'vexing.'

[16] *Carter v. Canada (Attorney General)* [2015]. SCC 5, [2015] 1 SCR 331

[17] Bill C-14 2016.

He opined further, 'as a court, I can't go second guessing these MAID assessors … but I'm stuck with this: the only comprehensive assessment of this person done says she's normal,' said Feasby. He concluded by describing the situation in the following words, 'that's really hard.' The judge therefore reserved his decision on whether he'll set aside the temporary injunction preventing M.V. from accessing MAID. The other part of his decision will deal with whether a judicial review will take place, which would examine how doctors came to sign off on M.V.'s MAID application.

11. Decision of the Court

Although, the court agreed that shared the sentiment of the defendant's father, yet the court was of the view that dignity and autonomy of the patient remains the overriding interest in this situation. The court did not also fail to highlight the lacuna in the law, qualifying a person for MAID over the ban on any review on what the decision of the doctors may be. While delivering it's ruling the court, inter-alia held; In a landmark ruling delivered on the 25th of March, 2024, Justice Colin Feasby said it is MV's [defendant] choice whether she chooses to live or die. In his words, 'MV's dignity and right to self-determination outweigh the important matters raised by WV and the harm that he will suffer in losing MV.[18] The judge therefore concludes that; 'What must be balanced is the harm to WV if an injunction is not granted – the profound grief that is caused by the death of a child and the harm to MV if an injunction is granted – the loss of autonomy and dignity'.

12. Conclusion

Although, the court's decision would only be applicable after the 30 days of appeal available to the plaintiff should they desire an appeal, this paper is however of the firm view that this case has vindicated the position of those in opposing of euthanasia and assisted suicide on the basis of autonomy. One therefore wonders if, a parent, even in the face of autonomy can no longer have a say on the issue[s] affecting their own children. This is notwithstanding the fact that there's a lacuna in the law establishing the Canadian MAID itself. This is because the only evidence in court was the one produced by the defendant's father and which clearly shows the defendant was okay except that she is having a mental issue. In fact, it is the mental issue that has incapacitated her from taking a decision on her own. Again, a law that does not allow a review of a process but considered okay be a team of 'treating doctors/ assessors' is not, with respect a good law. This is because medical personnel are also human beings who are, sometimes, prone to making mistakes in their diagnosis and prognosis. This is supported by the fact that in this present case one of the required doctor declines recommending the defendant for euthanasia. The authority concerned, bent at ensuring the defendant is found qualified, had to seek the assistance of another doctor. This is a time-bomb warning to all countries and jurisdictions seeking to legalize euthanasia and/ or assisted suicide to desist therefrom as same seeks to erode the power of a parent over his/ their children solely on the basis of autonomy. In the words of the presiding judge in this same case, 'a parent who finds him or herself in such a condition as this should only take solace in the fact that he/she/ has/have tried his/her best to protect their children. Hear the judge, the father 'can perhaps take some solace in the fact that he did his best to persuade his daughter of the value of her life and her parents' commitment to loving and supporting her.' This is no doubt autonomy taking too far.

[18]Carolyn Kury de Castillo Calgary judge rules woman can proceed with MAID despite dad's pleas <https://globalnews.ca/news/10393050/calgary-woman-medically-assisted-death-court-ruling/> Accessed 1 April, 2024.