

Melo v Superintendent of Royal Darwin Hospital [2007] NTSC 71

PARTIES: FERNANDO CONCALVES MELO and
AMELIA MELO

v

SUPERINTENDENT OF ROYAL
DARWIN HOSPITAL

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE
NORTHERN TERRITORY
EXERCISING TERRITORY
JURISDICTION

FILE NO: 140/07 (20733971)

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JUDGMENT OF: MILDREN J

CATCHWORDS:

Injunction – mandatory injunction – parens patriae jurisdiction – severely injured son of applicants – no recovery likely – application to extend order previously made to obtain further medical opinion – no evidence further opinion likely to alter diagnosis and prognosis – further treatment futile – order refused.

Northbridge v The Central Sydney Area Health Service (2000) 50 NSWLR 549; *Messiha v South East Health* [2004] NSWSC 1061, referred.

REPRESENTATION:

Counsel:

Applicant: G Clift
Respondent: K Currie

Solicitors:

Appellant: Ward Keller
Respondent: TIO Legal Department

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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Melo v Superintendent of Royal Darwin Hospital [2007] NTSC 71
No. 140/07 (20733971)

BETWEEN:

**FERNANDO CONCALVES MELO and
AMELIA MELO**
Applicant

AND:

**SUPERINTENDENT OF ROYAL
DARWIN HOSPITAL**
Respondent

CORAM: MILDREN J

REASONS FOR JUDGMENT

(Delivered ex tempore 19 December 2007)

- [1] Paulo Melo was involved in a motor vehicle accident at Cooida on 5 December 2007 at approximately 1530 hours.
- [2] The first respondents on the scene at 1600 hours clearly documented his condition. He was unconscious from the time of the arrival with no pupil responses and no responses to painful stimulation at all.
- [3] He had a Glasgow coma score of three. That is the worst recordable score and had already placed him in a poor prognostic group with respect to brain

injury. He also had a very low blood pressure which compromised the blood and oxygen flow to the brain and other organs.

- [4] He was difficult to extricate from the vehicle and this meant that further time at the scene was spent before he could be taken to the clinic at Jabiru and advanced resuscitation including intubation and mechanical ventilation could be undergone.
- [5] The Airmed team met him at the clinic and proceed quickly to intubate and transfer him to the Royal Darwin Hospital. He was in an unstable condition from his severe injuries and required ongoing resuscitation over this period during the flight.
- [6] He arrived at the Royal Darwin Hospital at 2119 and was treated in the major resuscitation area by emergency, medicine, surgical and intensive care doctors as a major trauma team response. He was stabilised and taken to CT to assess his injuries.
- [7] The main injury on the initial CAT scans was fractures of the cervical spine at a high level with almost complete obliteration of the spinal cord. This means that he had a high cervical spinal cord injury that was very severe. He also had some other minor injuries which are not relevant.
- [8] He was taken to the Intensive Care Unit to continue his management. The next day the pressures being measured to monitor for brain swelling were high so a repeat scan of the brain was performed which showed a small

amount of bruising to the brain and some swelling consistent with a brain injury.

- [9] The pressures continued to increase despite maximal therapy and reached levels consistent with a very severe brain injury with a very poor prognosis. This has been the clinical picture from the time of the arrival of the first medical team at the scene of the accident.
- [10] On the morning of 7 December long acting sedatives were ceased as it was evident that despite maximal treatment the brain injury was too severe to survive with any meaningful recovery. He has had no sedatives since that time that could be influencing his current condition.
- [11] He has had short acting medication at different times over the next two days, but the effects of that medication lasted minutes only and was used to prevent or treat severe spasms that were beginning to occur as a result of the high spinal cord injury. All other treatment was continued.
- [12] The patient's clinical condition has not changed over the last period of time he has been in hospital. As at the date of the swearing of the affidavit of Dr Stevens, who is the Director of the Intensive Care Unit, he remained unconscious due to his severe brain injury from which there has been no recovery at all.
- [13] Her opinion is that he has a higher spinal cord injury which has left him quadriplegic. His eyes open occasionally randomly and he has random eye

movements consistent with a severe brain injury. There is no objective evidence of consciousness. He has spasms related to his spinal cord injury.

- [14] Dr Stevens indicates in her affidavit the steps that have been taken to endeavour to assist the family to understand that Paulo is not going to survive and to bring them to an acceptance of this. She says that they have continued mechanical ventilation well beyond what she believes would be proper and that this should have ceased at an earlier time. She describes this therapy as futile.
- [15] Independent opinions have been sought. She refers to opinions being sought from the Royal Adelaide Spinal Unit and the Royal Adelaide Intensive Care Unit. The Royal Adelaide Spinal Unit, it is said, determined that management would not be changed by transfer to their unit, given the very poor prognosis associated with the injuries.
- [16] The Royal Adelaide Intensive Care Unit apparently concurred with the Royal Darwin Hospital assessment and stated that they would withdraw mechanical ventilation if Paulo was a patient in their unit.
- [17] A neurologist, Dr Jim Burrow has reviewed Paulo and the scans and has concurred with the diagnosis and prognosis of the Royal Darwin Hospital team.

- [18] A visiting neurosurgeon from Flinders Medical Centre, Mr Nick Vrodos, reviewed Paulo's case and spoke to the family and also concurred with the diagnosis and prognosis from the Royal Darwin Hospital.
- [19] As has already been indicated the copies of the scans and subsequently of the full medical notes have been provided to the family.
- [20] The team at the Royal Darwin Hospital, through its Director, indicate that: “We have tried in every way to prepare this family for the withdrawal of the mechanical ventilation and now it is time to put the interests of our patient Paulo Melo first - we feel strongly it is not ethical to continue with futile therapy”.
- [21] Dr Stevens advises that once the ventilator is removed Paulo may breathe for himself for a short time, or a long time. He is making some reflex respiratory movements of his own, but she doubts that they will sustain him for more than a short while because his brain and spinal cord injuries are too severe. That is the extent of the medical evidence before me.
- [22] Apart from that there are the affidavits of Amelia Melo, who is Paulo Melo's mother and she says that she has been by Paulo's bedside many times since the car accident and has watched over him. She says that on Sunday 16 December she observed an improvement in his condition. She says that his eyes were wide open for a long period and he made a lot of facial expressions. When her husband told Paulo to: “Look at mum”, he turned his head and his eyes focused in her direction.

- [23] That affidavit was sworn on 18 December. The affidavit of Nelson Melo really adds nothing to the case, except to indicate that the family wants to seek an independent opinion from another independent specialist.
- [24] No affidavit from the proposed specialist Dr Mobbs has been sworn and I have received only information from Mr Clift from the Bar table. The reason for that, according to Mr Clift, was because there was insufficient time to prepare an affidavit. He indicated to me that he and his instructor had spoken to Dr Mobbs who indicated only that he was unable to provide a different opinion until he had examined the patient.
- [25] There is nothing, as Mr Currie observes, in that statement to indicate that he indicates that there is a realistic chance. The jurisdiction of the court to act in cases such as this matter is quite limited. An application to this court is based upon the court's *parens patriae* jurisdiction to act in the welfare of a person who is unable to care for himself or make his own decisions as to what is in his best interests. Such a jurisdiction is recognised in relation to the treatment of critically ill patients: see for example the decision of O'Keefe J in *Northbridge v The Central Sydney Area Health Service* (2000) 50 NSWLR 549 and the case of *Messiha v South East Health*, a decision of Howie J in the New South Wales Supreme Court, [2004] NSWSC 1061.
- [26] As Howie J said, and what he says here is consistent with what O'Keefe J said in the *Northbridge* case:

“There is undoubted jurisdiction in the Supreme Court of New South Wales to act to protect the right of an unconscious person to receive ordinary, reasonable and appropriate (as opposed to extraordinary, excessively burdensome, intrusive or futile) medical treatment, sustenance and support. In this day and age ordinary, reasonable and appropriate treatment, for a person of the age and condition of Mr Thompson, would extend to the administration of antibiotics and appropriate feeding. The Court also has jurisdiction to prevent the withdrawal of such treatment, support and sustenance where the withdrawal may put in jeopardy the life, good health or welfare of such unconscious individual. What constitutes appropriate medical treatment in a given case is a medical matter in the first instance. However, where there is doubt or serious dispute in this regard, the court has the power to act to protect the life and welfare of the unconscious person.”

[27] The difficulty here is that the only evidence before me suggests that continuing with the current treatment of this patient is futile and that in the opinion, not only of the specialists at the Royal Darwin Hospital, but of other specialists who have been consulted, it is futile. There is no evidence to the contrary. As Mr Currie points out, the evidence of eye movements are not inconsistent with the observations of Doctor Stevens relating to spasms which are the result of a high spinal cord injury.

[28] I have been asked to extend the order made by the Chief Justice yesterday, only for a very short time to enable Dr Mobbs to come to Darwin to look at the patient. Ordinarily I would be happy to do so, if there was some point to it, if there was some evidence before me that this would be a useful or possibly useful course to take. The difficulty I have is that there is no evidence of any kind which would indicate even the slightest possibility that there is anything that can be done for this person.

[29] As I said before, the jurisdiction of this Court to interfere in such matters is very limited. The grounds are not made out and the application is therefore refused.

[30] I feel extremely sorry for Mr and Mrs Melo and for their son, Nelson. This is a very sad thing for them to have to endure. I know if this was my son or my daughter I would feel exactly as they do and I would want to turn every stone over before I was prepared to give in. But I am afraid that is not the way the law works and whilst I have every sympathy for them, I am not able to make the order that they seek.

[31] The application is refused.
