

Petersen

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IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

IN THE MATTER OF THE APPLICATION OF)	
THE DIVISION OF MENTAL, ALCOHOLISM)	
AND DRUG DEPENDENCE THROUGH CAROLYN)	FAMILY NO. 4/82
KEYS, PSYCHIATRIC SOCIAL WORKER FOR)	
STERILIZATION OF:)	
	PETITION FOR
A.B.)	AUTHORIZATION OF
)	STERILIZATION
)	

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PETERSEN, Judge

MEMORANDUM OPINION
August 6, 1985

This action involves a petition by the Virgin Islands Government requesting this Court's authorization for the purportedly voluntary sterilization of A.B., a mentally retarded adult. Pursuant to 4 V.I.C. Section 76(a) (1982 Supp.), the Court appointed a guardian Ad Litem to represent the interests of Ms. B in this matter. According to the petition, judicial authorization is required. The Court requested and received a brief from each party on the question

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of this Court's jurisdiction to authorize sterilization. Both parties allege that this Court does have jurisdiction.

I. ISSUES

The issue presented for determination can be stated as follows:

1. Whether, in the absence of explicit statutory authority, this Court has equitable jurisdiction to authorize the sterilization by tubal ligation.

2. If so, and assuming that the Court exercises jurisdiction, by what criteria should it determine whether or not Ms. A.B. has the mental capacity to make an informed decision to undergo sterilization.

3. Assuming the absence of capacity, by what standards will the Court determine whether or not to authorize sterilization.

II. FACTS

A.B. is twenty-four years old. She has previously been diagnosed to be mentally retarded, with an I.Q. of forty-two and with "aggressive behavior[al] tendencies". She is said to be strongly preoccupied with sex and has given birth to three children - twins and a boy - with only the boy

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still alive. A.B. resides with her mother in a relatively large household. ^{1/} The government's petition states that Ms. B and her mother have voluntarily requested that sterilization by tubal ligation be performed on Ms. B.

III. DISCUSSION

Each party concedes and this Court finds that no existing authority explicitly vests this Court with jurisdiction to authorize the sterilization of an adult. This Court must therefore decide whether or not such jurisdictional authority is implied in the Court's statutory grant of equitable power.

IV. GENERAL EQUITY JURISDICTION

The District Court of the Virgin Islands is a Court of original jurisdiction over all matters not within the exclusive jurisdiction of the Territorial Court. 4 V.I.C. Section 32(a). As a Court of original jurisdiction, the District Court is subject to Rule 2 of the Federal Rules of Civil Procedure, which merges all civil jurisdiction in law

^{1/} A.B.'s mother, who is alleged to have "a low I.Q.", has produced twelve children, three of whom are said to be mentally retarded and one who is a deaf mute.

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and equity into one form of action. The Territorial Court of the Virgin Islands is vested with original jurisdiction concurrent with that of the District Court in selected matters, including the authority "to supervise and administer estates and fiduciary relations" and to appoint and supervise guardians and trustees". 4 V.I.C. Section 76(a). The rules of the Territorial Court provide that the practice and procedure of its Court shall conform as nearly as possible as those of the District Court, Investigations Unlimited v. All American Holding Corp., 16 V.I. 524 (Terr. Ct. St. T. and St. J. 1979), and that there shall be but one civil form of action. 5 V.I.C. App. IV. R. 21. See also Bolling v. Commissioner of Education, 14 V.I. 111 (Terr. Ct. St. Croix 1977); Homer v. Lorillard, 6 V.I. 558 (Mun. Ct. St. Croix 1967).

Additional statutory guardianship jurisdiction is found in 15 V.I.C. Section 801(3), which grants the District Court jurisdiction to "take the care and custody of the persons and estates of lunatics and to appoint and remove guardians therefore". 15 V.I.C. Section 801(4) authorizes the District Court "to direct and control the conduct of guardians" appointed pursuant to 15 V.I.C. Section 801(3).

Although the above grant of statutory power does

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vest the District and Territorial Court with concurrent jurisdiction to supervise guardianship matters, it does not vest the Territorial Court with specific authority to authorize the sterilization of a mental incompetent.

V. INHERENT PARENS PATRIAE AUTHORITY

Because of the shameful historical use of compulsory eugenic laws in the United States, See Buck v. Bell, 274 U.S. 200 (1927); Skinner v. Oklahoma, 316 U.S. 535, 546 (1942), and judicial reluctance to intervene in so fundamental a decision as to whether or not to bear or beget a child, see Eisenstadt v. Baird, 405 U.S. 438, 453 (1972); Griswold v. Connecticut, 381 U.S. 479 485 (1962), the majority of courts which considered the issue prior to 1978 held that absent specific statutory authority, courts lack jurisdiction to authorize the sterilization of a mental incompetent. ^{2/}

^{2/} See Sparkman v. McFarlane, 552 F.2d 172 (7th Cir. 1977), rev'd. sub nom, Stump v. Sparkman, 535 U.S. 349 (1978); Wade v. Bethesda Hosp., 337 F. Supp. 671 (S.D. Ohio. 1971); Guardianship of Tulley, 83 Cal. App.3d 698, 146 Cal. Rptr. 266 (1978), cert. denied, 440 U.S. 967 (1969); Guardianship of Kemp, 43 Cal. App.3d 758, 118 Cal. Rptr. 64 (1974); In re S.C.E., 378 A.2d 144 (Del. Ch. 1977); A.L. v. G.R.H., 163 Ind. App. 636, 325 N.E.2d 501 (1975), cert. denied, 425 U.S. 936 (1976); Holmes v. Powers, 439 S.W.2d 579 (Ky. Ct. App. 1968).

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As a California appellate court recently noted,
these decisions were primarily based upon the belief that

. . . the awesome power to deprive
a human being of his or her funda-
mental right to bear or beget
offspring must be founded on the
explicit authorization of the
Legislature rather than a mere
inference deduced from the general
principles of common law or the
canons of equity jurisprudence.
Guardianship of Tulley, 146 Cal.
Rptr. 266 (1978), cert. denied,
440 U.S. 967 (1979).

The inherent parens patriae power of courts of
general jurisdiction has been increasingly invoked in recent
years in cases involving substituted consent for irrevocable
or emergency medical procedures. These courts have held that
the parens patriae doctrine imposes a duty on the courts "to
protect those persons within the state who cannot protect
themselves because of an innate legal disability". In re
Grady, supra, at 479. ^{3/}

^{2/} continued . . . In re M.K.R., 515 S.W.2d 467 (Mo.
1974); Application of A.D., 90 Misc.2d 236, 394 N.Y.S.2d 139
(Surr. Ct. 1977), aff'd on other grounds, 64 A.D.2d 898, 408
N.Y.S.2d 104 (1978); Frazier v. Levi, 440 S.W.2d 393 (Tex.
Civ. App. 1969).

^{3/} Courts have made consensual decisions on behalf of an
incompetent with respect to amputation, Matter of Schiller,
148 N.J. Super. 168, 372 A.2d 360 (1977); Application of Long
Island Jewish Hillside Medical Center, 73 Misc. 2d 395, 342

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In the wake of the Supreme Court's 1978 decision in Stump v. Sparkman, supra, an increasing number of courts have held that a court of general equity jurisdiction has the inherent *parens patriae* power to authorize the sterilization of a mental incompetent in the absence of specific statutory authority. ^{4/}

Two Virgin Islands decisions have previously addressed the question of this Court's jurisdiction to

^{3/} continued . . . N.Y.2d 356 (N.Y. Sup. 1973), shock treatment, Price v. Sheppard, 307 Minn. 250, 239 N.W.2d 905, 911 (Minn. 1978), chemotherapy, Superintendent of Belchertwon State School v. Sackewitz, 370 N.E.2d 417 (Mass. 1977), discontinuation of artificial life support systems, In re Quinlan, 70 N.J. 10, 355 A.2d 647, 666, cert. denied sub. nom., Garger v. New Jersey, 429 U.S. 922 (1976), and medication, In re Boyd, 403 A.2d 744 (D.C. App. 1979). Courts have also employed their *parens patriae* power to authorize blood transfusions over parental objection, State v. Perricone, 181 A.2d 751 (N.J.) cert. denied. 371 U.S. 890 (1962), and kidney transplants, Strunk v. Strunk, 445 S.W.2d 145 (Ky. Ct. App. 1969) (consent for 27 year old incompetent to donate kidney to 28 year old brother); Hart v. Brown, 29, Conn. Sup. 368, 289 A.2d 386 (1972) (court permits parents of seven year old twins to consent to transplant of kidney from one child to another.)

^{4/} See In the matter of Moe, 385 Mass. App. 555, 432 N.E.2d 712, 718-719 (Mass. 1982); In the matter of C.D.M., 627 P.2d 607, 610-612 (Alaska 1981); In re Grady, 85 N.J. 235, 426 A.2d 467, 479-481 (N.J. 1981); In the matter of Guardianship of Hayes, 93 Wash. 228, 608 P.2d 635, 637-639 (Alaska 1980) (en banc); In the matter of Sallmaier, 378 N.Y.S.2d 989 (N.Y. Sup. Ct. 1976); In the matter of Terwilliger, 450 A.2d 1376, 1380-1382 (Pa. Supr. 1982). See also, In re Simpson, 180 N.E.2d 206, 208 (Ohio Prob. 1962).

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authorize a sterilization. In re B.L., Fam. No. 49/1977 (Terr. Ct., Div. of St. T. and St. J.) (unpublished order), Judge Feuerzeig found explicit statutory authority to authorize a partial hysterectomy under 19 V.I.C. Section 291(d), in order "to protect the health" of a minor. Because Judge Feuerzeig based his decision on the explicit language of 19 V.I.C. Section 291(d), authorizing "any emergency medical or surgical treatment in which undue delay would endanger the life or health of" a minor. In re B.L. has no direct bearing on the issue before this court.

In re Miller 13 V.I. 489, 493 (Terr. Ct. St. Croix 1977), the Virgin Islands Government petitioned the Court for the sterilization of Miller, an alleged mental incompetent. Judge Silverlight held that: (1) absent explicit statutory authority, this court is prohibited by the ninth amendment to the United States Constitution from extending its general equity jurisdiction "to so fundamental a natural right as that of a person to be secure in his or her ability to procreate"; (2) the general equity jurisdiction of the Territorial Court is enumerated to the exclusion of jurisdiction to authorize the sterilization of a mental incompetent.

In Miller, Judge Silverlight specifically relied

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upon the decision of the Seventh Circuit in Sparkman v. McFarlane, supra, and implicitly relied upon the absence of contrary case law. Judge Silverlight cited McFarlane in finding that there is no jurisdiction to authorize the sterilization of a mental incompetent absent explicit statutory authority. Miller, supra, at 494-95. The Supreme Court decision in Stump v. Sparkman, supra., overruled McFarlane. In Stump, the Court held that a court of broad general jurisdiction in Indiana had jurisdiction to authorize minor's sterilization in the absence of specific statutory authority or contrary (local) case law. Id. at 357. It is implicit in this holding that there is no absolute constitutional bar to such court ordered sterilization. Stump appears to be the foundational support for the growing number of courts finding jurisdiction to authorize sterilization in the absence of a conferring statute. However, Stump has been held to only be "instructive", In the matter of C.D.M., supra at 612, and "persuasive", In re Hayes, supra at 637, and not conclusive authority on the direct issue of a court's jurisdiction to authorize the sterilization of a mental incompetent absent explicit statutory authority.

An examination of the jurisdictional grant of the Territorial Court reveals that This Court lacks jurisdiction

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to order the sterilization of a mentally incompetent person. Further, the jurisdiction of this Court is distinguished from that of the Court in Stump, leaving Judge Silverlight's finding of a lack of jurisdiction to order the sterilization of an incompetent in Miller valid and applicable in the instant case. As noted by Judge Silverlight, the Territorial Court of the Virgin Islands is vested with original jurisdiction concurrent with that of the District Court in selected matters, none of which explicitly authorize the sterilization of an incompetent. See In re Miller, 13 V.I. 489, 493 (Terr. Ct. St. Croix 1977). In the instant case, as in Miller, 4 V.I.C. Section 76(a) ^{5/} Court's jurisdiction is restricted to the supervision and administration of estates and fiduciary relations and to the appointment and supervision of guardians and trustees for those estates. Miller, 14 V.I. at 493-494.

^{5/} Section Seventy six, paragraph (a) of Title Four, Virgin Islands Code provides:

The Territorial Court shall have original jurisdiction concurrent with that of the District Court in all civil actions wherein the matter in controversy exceeds the sum of Two Hundred Thousand (\$200,000) Dollars; to supervise and administer estates and fiduciary relations; to appoint and supervise and guardians and trustees; to hear and determine juvenile, divorce,

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In contrast, the jurisdictional grant in Stump provided:

"original exclusive jurisdiction in
all cases at law and in equity
whatsoever", [guardianship and
appellate jurisdiction, and
jurisdiction over] "all matters
and proceedings where exclusive
jurisdiction thereof is not
conferred by law upon some other
court, board, or officer".
Stump, 435 U.S. at 357.

Whereas the jurisdiction of the Indiana court is
broad and borders on being plenary, the statutory language of
4 V.I.C. Section 76(a) is restrictive. It neither creates a
broad jurisdictional grant to the Territorial Court which, in
the absence of a contrary statute or case law, can be the
basis for authorizing the sterilization of a mental
incompetent, See Stump, 435 U.S. at 357-58, nor does it vest
the Territorial Court with specific authority to authorize the
sterilization of a mental incompetent.

5/ continued . . . annulment and separation
proceedings; to grant adoptions and
changes of name; to establish paternity;
to legitimize children and to make
orders and decrees pertaining to support
relations.

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CONCLUSION

The Territorial Court is a court of limited and enumerated jurisdiction. It does not have specific statutory authority to order the sterilization of a mental incompetent. Further, there is no applicable case law which, in the absence of specific statutory authority, authorizes a court of limited jurisdiction to order the sterilization of a mental incompetent. Consistent with the limited jurisdiction of this tribunal, this court holds that it lacks jurisdiction to authorize the sterilization of Ms. A.B.

In view of this ruling on the issue of jurisdiction, this Court need not decide the other issues presented herein.


EILEEN R. PETERSEN
Judge