

SUPREME COURT OF COLORADO

In the Matter of LaVista Earline Romero

790 P.2d 819 (Colo. 1990) · No. No. 89SA248 · Decided April 23, 1990

SUMMARY

The Colorado Supreme Court reviewed a guardian's petition for an order authorizing the nonconsensual sterilization of an incapacitated adult woman. The court held that the petitioner had not established by clear and convincing evidence that Romero lacked competence to consent to or refuse sterilization, and it reversed the district court's order. The court emphasized the fundamental right to procreate and the need for careful review of sterilization petitions.

CASE DETAILS

COURT	Supreme Court of Colorado
WRITING FOR THE COURT	Justice Lohr; Justice Erickson; Justice Mullarkey; Justice Rovira
JURISDICTION	Colorado
DECIDED	April 23, 1990
DOCKET	No. 89SA248
DISPOSITION	reversed
PROCEDURAL POSTURE	The incapacitated person appealed a Delta County District Court order authorizing her guardian to have her sterilized by tubal ligation.
STANDARD OF REVIEW	Broad appellate review applies to the serious competency determination involved in a nonconsensual sterilization petition; the appellate court reviewed whether incompetence was established by clear and convincing evidence.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	LaVista Earline Romero, incapacitated person v. Shirley J. Harvey, guardian

TOPICS

- guardianship procedure
- guardianships
- guardian ad litem
- health law
- appellate procedure

PRACTICE AREAS

- guardianship
- health law
- constitutional law
- appellate procedure

QUESTIONS PRESENTED

1. Whether Colorado district courts have jurisdiction under their *parens patriae* authority to consider a guardian's petition for nonconsensual sterilization of an incapacitated adult when no applicable Colorado statute authorizes the proceeding.
2. What competency standard governs whether an incapacitated person can grant or withhold consent to sterilization.
3. Whether the evidence established by clear and convincing evidence that Romero was incompetent to consent to or refuse sterilization.

HOLDINGS

1. Colorado district courts have jurisdiction under their *parens patriae* authority to act on petitions for sterilization of incompetent persons, even though no Colorado statute authorized the particular petition involving Romero.
2. An individual is competent to grant or withhold consent to sterilization if the individual understands the nature of the district court proceedings, the relationship between sexual activity and reproduction, and the consequences of the sterilization procedure.
3. Before considering whether sterilization is medically essential or in the individual's best interest, the petitioner must prove by clear and convincing evidence that the individual is incompetent to decide about sterilization and that the incapacity is not likely to improve in the future.
4. The district court's finding that Romero was incompetent to grant or withhold consent to sterilization was unsupported by clear and convincing evidence.

KEY QUOTATIONS

“An individual should be deemed competent to grant or withhold consent if the individual understands the nature of the district court's proceedings, the relationship between sexual activity and reproduction and the consequences of the sterilization procedure.” (823)

“If Ms. Romero is competent to make a decision, she must remain free to do so, even if that means making a decision that many would consider unwise.” (824)

“In summary, we find the trial court's determination that Ms. Romero is incompetent to grant or withhold consent to a sterilization procedure to be unsupported by clear and convincing evidence and, therefore, we reverse the trial court's sterilization order.” (824)

FACTUAL BACKGROUND

LaVista Romero was a thirty-seven-year-old woman and mother of two children who suffered brain damage after oxygen deprivation associated with diabetic complications at age thirty-three. She lived in a nursing home, and her mother and guardian petitioned for authorization to sterilize her because pregnancy and childbirth posed substantial health risks. At the hearing, Romero testified that she understood the proceedings, the relationship between sexual intercourse and pregnancy, and the consequences of tubal ligation, and she expressed a desire to retain the ability to have another child.

PROCEDURAL HISTORY

In 1985, Shirley Harvey petitioned the Delta County District Court to have LaVista Romero declared incapacitated and to be appointed her guardian; the court granted the petition. In 1988, Harvey petitioned for an order authorizing Romero's sterilization. After appointing a guardian ad litem and conducting an evidentiary hearing, the district court ordered sterilization. Romero appealed, and the Colorado Supreme Court reversed.

DISPOSITION

reversed

CASES CITED

- In re A.W., 637 P.2d 366 (Colo. 1981)
- In re C.D.M., 627 P.2d 607 (Alaska 1981)
- In re Moe, 385 Mass. 555, 432 N.E.2d 712 (1982)
- In re Grady, 85 N.J. 235, 426 A.2d 467 (1981)
- In re Guardianship of Hayes, 93 Wash. 2d 228, 608 P.2d 635 (1980)
- Skinner v. Oklahoma, 316 U.S. 535 (1942)
- Carey v. Population Services International, 431 U.S. 678 (1977)
- Eisenstadt v. Baird, 405 U.S. 438 (1972)
- Griswold v. Connecticut, 381 U.S. 479 (1965)
- Buck v. Bell, 274 U.S. 200 (1927)
- In re Truesdell, 63 N.C. App. 258, 304 S.E.2d 793 (1983), aff'd, 313 N.C. 421, 329 S.E.2d 630 (1985)
- In re Terwilliger, 304 Pa. Super. 553, 450 A.2d 1376 (1982)
- Wentzel v. Montgomery General Hospital, Inc., 293 Md. 685, 447 A.2d 1244 (1982), cert. denied, 459 U.S. 1147 (1983)
- In re Debra B., 495 A.2d 781 (Me. 1985)
- In re Grady, 170 N.J. Super. 98, 405 A.2d 851 (1979), aff'd, 85 N.J. 235, 426 A.2d 467 (1981)