COURT OF APPEAL FOR ONTARIO

CITATION: Cefarelli v. Hamilton Health Sciences, 2013 ONCA 413
DATE: 20130618
DOCKET: C57001

Goudge, MacPherson and Juriansz JJ.A.

IN THE MATTER OF an application under section 68 of the *Substitute Decisions Act, 1992*, S.O. 1992, c.30

BETWEEN

Silvana Cefarelli

Applicant (Appellant)

and

Hamilton Health Sciences, Corey Sawchuk and Antonio Costantini

Respondents (Respondents)

Alexander Procope and Mark Handelman, for the appellant

Cindy Clarke and Lee Lenkinski, for the respondents

Heard: June 17, 2013

On appeal from the judgment of Justice Crane of the Superior Court of Justice, dated May 3, 2013.

ENDORSEMENT

[1] This appeal arises in the context of end-of-life decisions affecting Antonio Costantini. The court is fully conscious of how difficult such decisions can be, and of the deep feelings that accompany them. For that reason, the court reserved its decision in order to carefully review and consider all aspects of this

matter. In the end, the court's view is that the appeal must be dismissed for the following reasons.

[2] The appellant raises three arguments. First, she argues that the application judge erred in disposing of more than her request for interim relief by going on to dismiss the entire application. We disagree. The application judge made it clear that he had before him only an application for what he called an interim order and was deciding nothing more than that. When he rejected that relief, it was entirely proper for him to dismiss the application before him.

[3] Second, although she did not press it in oral argument, the appellant argues that the reasons below are inadequate. However, in our view the reasons are quite sufficient to explain the path the application judge followed to reach his conclusion and to permit appellate review of it. This argument must be rejected.

[4] The third is the appellant's principal argument. She says that the application judge erred in refusing the interim relief sought. Again we disagree. In our view the application judge was correct in finding that the November 2012 treatment plan (which was consented to) gives the responsible physician discretion regarding which components of cardiopulmonary resuscitation are to be used and which are not. One such component is cardiac compression. In these circumstances, the contested order was simply one available to the doctor within that plan. It cannot be said to be a withdrawal of treatment from that treatment plan. No question therefore arises of the need for consent.

Rather, it is, as the application judge said, effectively a request to impose CPR treatment which, for this patient, carries no possibility of medical benefit, but would only inflict harm on him.

[5] There is thus no underlying legal issue of consent being necessary that requires the suspension of the no-CPR order pending its resolution. There is simply no legal underpinning for the order sought.

[6] The appeal must be dismissed. No costs are asked or ordered.

"I. Saunders J.A."

"J.B. MacPherson J.A."

"R.A. Blair J.A."