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Surrogate's Court, Broome County, In re Guardian of Derek

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SURROGATE'S COURT OF NEW YORK
BROOME COUNTY

In re Guardian of Derek [1]
(decided June 27, 2006)

Derek's parents petitioned the Broome County Surrogate's Court to be appointed his guardian pursuant to article 17-A of the New York Surrogate Court Procedure Act ("Article 17-A")[2] on the grounds that he was developmentally disabled.[3] Derek moved to dismiss the petition and to strike two physicians' affirmations which were submitted with the petition.[4] The basis of Derek's motion was that the affirmations violated the physician patient privilege of New York Civil Practice Law and Rules, section 4504.[5] Derek argued that people who fall under Article 17-A and people who fall under New

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[1] *In re* Guardian of Derek, 821 N.Y.S.2d 387 (Sur. Ct. June 27, 2006).

[2] N.Y. SURR. CT. PROC. ACT § 1750 (McKinney 2006) provides:

> When it shall appear to the satisfaction of the court that a person is a mentally retarded person, the court is authorized to appoint a guardian of the person or of the property or of both if such appointment of a guardian or guardians is in the best interest of the mentally retarded person. Such appointment shall be made pursuant to the provisions of this article . . . .

[3] *Derek*, 821 N.Y.S.2d at 388.

[4] *Id.*

[5] *Id.* ("The physician patient privilege is a rule of evidence in New York and is applicable to all types of communication by the patient to the physician in his professional capacity."); N.Y.C.P.L.R. § 4504 (McKinney 2006) provides:

> Unless the patient waives the privilege, a person authorized to practice medicine, registered professional nursing, licensed practical nursing, dentistry, podiatry or chiropractic shall not be allowed to disclose any information which he acquired in attending a patient in a professional capacity, and which was necessary to enable him to act in that capacity.

York Mental Hygiene Law article 81("Article 81")[6] are unjustly subjected to different rights.[7] Essentially, Derek argued that his rights to equal protection under the law guaranteed by the provisions of both the United States Constitution[8] and New York State Constitution[9] had been violated.[10] While Derek's motion to dismiss was denied, the court granted Derek's motion to strike, holding that the physician patient privilege prevented disclosure of Derek's medical records.[11]

In 2003, at the age of nineteen, Derek traveled to Spain where he was assaulted and suffered traumatic injuries to his brain and spinal cord.[12] As a result of the assault, Derek became a paraplegic.[13]

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[6] N.Y. MENTAL HYG. LAW § 81.01 (McKinney 2006) provides:

> [I]t is the purpose of this act to promote the public welfare by establishing a guardianship system which is appropriate to satisfy either personal or property management needs of an incapacitated person in a manner tailored to the individual needs of that person, which takes in account the personal wishes, preferences and desires of the person, and which affords the person the greatest amount of independence and self-determination and participation in all the decisions affecting such person's life.

[7] *Derek*, 821 N.Y.S.2d at 389.

[8] U.S. CONST. amend. XIV states:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

[9] N.Y. CONST. art. I, § 11 states:

> No person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall, because of race, color, creed or religion, be subjected to any discrimination in his or her civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state.

[10] *Derek*, 821 N.Y.S.2d at 389 (citing 20 N.Y. JUR. 2d CONST. LAW § 342 (2006)).

[11] *Id.* at 390.

[12] *Id.* at 388.

[13] *Id.*

Allegedly, Derek now suffers from delusions, poor impulse control, depression, and the inability to make reasoned decisions.[14] Moreover, Derek was admitted to the psychiatric unit at Binghamton General Hospital.[15]

Derek moved to strike the affirmations given by his treating psychiatrist and supervising psychiatrist at Binghamton General Hospital because the affirmations of the psychiatrists indicated that they had reviewed and relayed information from Derek's medical records in violation of the physician patient privilege.[16] The court granted the motion to strike, holding that the New York Civil Practice Law and Rules, section 4504 physician patient privilege, and Article 17-A prevented the disclosure of Derek's medical records without his permission or without him affirmatively placing his medical condition in issue.[17] The *Derek* court held that there was no rational reason for permitting a respondent in a contested Article 81 guardianship proceeding to assert the physician patient privilege, when the law does not permit a respondent in a contested Article 17-A guardianship proceeding to invoke such a privilege.[18]

Derek argued that these affirmations violated his physician patient privilege and his right of equal protection under the United States Constitution and the New York State Constitution because disclosure of his medical records would result in unequal treatment to

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[14] *Id.*
[15] *Derek*, 821 N.Y.S.2d at 388.
[16] *Id.*
[17] *Id.*
[18] *Id.* at 389.

those in similar situations.[19] To analyze Derek's equal protection claims, the court first assessed the classifications of disabilities in guardianship proceedings: mentally retarded, incapacitated, and developmentally disabled individuals.[20] While case law generally discusses the above three categories, the *Derek* court found there was no rational reason why an alleged developmentally disabled respondent in a guardianship proceeding should be distinguished from a mentally retarded or incapacitated respondent, given that such classifications did not further a federal or state interest.[21] Derek did not place his medical condition in issue, he did not give permission, and there was no court order for his medical records to be disclosed.[22] Accordingly, Derek's medical records were to be protected by the physician patient privilege of New York Civil Practice Law and Rules, section 4504, making it a violation of the Equal Protection Clause of both the United States Constitution and the New York State Constitution to permit the disclosure of records in a guardianship proceeding under Article 17-A.[23]

The *Derek* court relied on *Cleburne v. Cleburne Living Center*,[24] where the United States Supreme Court held that "the mentally retarded, like others, have and retain their substantive constitutional rights in addition to the right to be treated equally by

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[19] *Id.* at 389, 390.
[20] *Derek*, 821 N.Y.S.2d at 389.
[21] *Id.*
[22] *Id.*
[23] *Id.* at 390.
[24] 473 U.S. 431 (1985).

the law."[25] The Court additionally held that a rational basis standard was to be applied to determine if there were any distinctions in law affecting the equal protection of the mentally retarded.[26] The possibility of differences in policies for the mentally retarded is afforded to the government to give them the opportunity to pursue compelling interests to better assist them in efficiently engaging in activities.[27] However, the Court stressed the importance of treating similarly situated people the same under the Fourteenth Amendment of the United States Constitution.[28] The Court stated that, "[t]he Equal Protection Clause of the Fourteenth Amendment commands that no State shall 'deny to any person within its jurisdiction the equal protection of the laws,' which is essentially a direction that all persons similarly situated should be treated alike."[29]

The *Derek* court also discussed *Heller v. Doe,*[30] where the United States Supreme Court again held that the rational basis standard applies to mentally retarded individuals.[31] In *Heller,* a class of mentally retarded persons claimed that the distinctions are "irrational and violate the Equal Protection Clause of the Fourteenth Amendment. . . . [and] that granting close family members and

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[25] *Id.* at 447.

[26] *Id.* at 442.

[27] *Id.* at 444. In particular, the Court explained that: "The general rule is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest." *Id.* at 440 (citing Schweiker v. Wilson, 450 U.S. 221, 230 (1981)). The Court also added, "[w]hen social or economic legislation is at issue, the Equal Protection Clause allows the States wide latitude . . . ." *Id.* (citing U.S. R.R. Ret. Bd. v. Fritz, 449 U.S. 166, 174 (1980)).

[28] *Id.* at 439.

[29] *Cleburne,* 473 U.S. at 439 (quoting Plyler v. Doe, 457 U.S. 202, 216 (1982)).

[30] 509 U.S. 312 (1992).

[31] *Id.* at 315 (determining the difference between the standards of review for a voluntary

guardians the status of parties violates the Due Process Clause."[32] In response to the claim brought, the Court stated that a classification would be " 'upheld against equal protection challenge if there is any reasonable conceivable state of facts that could provide a rational basis for the classification.' "[33] Therefore, the Court in its reliance upon precedent, determined that the state's rationale for the differences was valid, and the rational basis for the distinctions did not violate the Equal Protection Clause.[34]

However, the instant case involved the difference between individuals classified under Article 17-A and Article 81 of New York law, thus New York case law was particularly relevant to the *Derek* decision.[35] Derek claimed that his classification under Article 17-A placed him in a similar situation as someone under Article 81 with different rights in violation of the "due process clause of the Federal and State Constitutions."[36] In *In re Rosa B.-S.*,[37] there was a proceeding pursuant to Article 81 for the appointment of a guardian for a non-consenting incapacitated person.[38] A proceeding placed the incapacitated person's medical and mental condition into controversy and the court held that "he or she does not waive the doctor-patient privilege unless he or she has affirmatively placed his or her medical

commitment hearing and an involuntary commitment hearing).

[32] *Id.*

[33] *Id.* at 320 (quoting FCC v. Beach Communications, 508 U.S. 307 (1993)).

[34] *Id.* at 328. The Court in this situation determined that there was a large degree of difference between mental illness and mental retardation which would not classify two persons with these conditions in similar situations. *Id.*

[35] *Derek*, 821 N.Y.S.2d at 389.

[36] *Id.* at 390.

[37] 767 N.Y.S.2d 33 (App. Div. 2d Dep't 2003).

[38] *Id.* at 34.

condition in issue."[39] Upon review, the appellate division found that the trial court improperly allowed testimony concerning the incapacitated person's treatment from her former physician because she did not waive her right to physician patient privilege of New York Civil Practice Law and Rules, section 4504 or affirmatively place her medical condition in issue.[40]

The *Derek* court also discussed *Dillenbeck v. Hess*,[41] an additional New York case considering the availability of the physician patient privilege where a party did not place their medical or mental condition into controversy. In *Dillenbeck*, the plaintiff motioned for discovery of the defendant's medical and hospital records, but the defendant had not placed his condition into controversy.[42] The New York State Court of Appeals held that where a party "validly asserts the privilege and has not affirmatively placed his or her medical condition in issue" it prevents the motioning party from being entitled to the medical and hospital records.[43] In particular, the court stated that "a party does not waive the privilege whenever forced to defend an action in which his or her mental or physical condition is in controversy."[44]

Another case following this line of New York case law is *In re B*,[45] where the court recognized the similarities between the

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[39] *Id.*

[40] *Id.*

[41] 536 N.E.2d 1126 (N.Y. 1989).

[42] *Id.* at 1129.

[43] *Id.* at 1128.

[44] *Id.* at 1132; *Derek*, 821 N.Y.S.2d at 389 ("Derek has not placed his condition in issue.").

[45] 738 N.Y.S.2d 528 (Tompkins County Ct. 2002).

classifications of developmentally disabled and mentally retarded individuals.[46] A moderately retarded woman petitioned to modify an order which, under Article 81, appointed her mother as her guardian so that she could demonstrate to the court that she had the capacity to give her informed consent.[47] The court indicated that "[t]he equal protection provisions of the Federal and State Constitutions would require that mentally retarded persons in a similar situation be treated the same whether they have a guardian appointed under Article 17-A or Article 81."[48] The court continued by stating that "[t]here is no rational basis for saying the ability of a guardian for a mentally retarded person to consent to medical treatment of the ward should differ if the guardian is appointed under Article 81 . . . [or] 17-A."[49]

The Equal Protection Clauses of both the United States Constitution and New York State Constitution require that persons in a similar situation are to be treated the same whether they have a guardian appointed under either Article 17-A or Article 81.[50] Under the Health Insurance Portability and Accountability Act ("HIPAA"), health care providers, including doctors, hospitals, and mental health facilities, may disclose information about a patient upon either the patient's authorization or by a court order.[51] Additionally, New York Mental Hygiene Law § 33.13(c) provides that the records maintained

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[46] *Id.* at 532.
[47] *Id.* at 529.
[48] *Id.* at 532.
[49] *Id.*
[50] *Derek*, 821 N.Y.S.2d at 389; *In re B,* 738 N.Y.S.2d at 532.
[51] 45 C.F.R. §§ 160.103, 164.508, and 164.512(e) (2006).

by a mental health facility, which includes the psychiatric ward of a hospital, shall be disclosed only upon either the patient's authorization or by a court order.[52] The state and federal constitutions as well as HIPAA and New York Mental Hygiene Law all promote the protections of an individual's privacy, specifically their medical records.[53] The "essence of the right to equal protection of the laws is that all persons similarly situated are treated alike."[54] The Court in *Cleburne* stated that the Equal Protection Clause of the Fourteenth Amendment essentially gives the direction that "all persons similarly situated should be treated alike."[55]

Therefore, it would be a violation of both the federal and state constitutions as well as illogical for a respondent in a guardianship proceeding to be able to assert the privilege in one proceeding but not the other when both individuals are similarly situated.[56] The rights and privileges granted by the federal and state constitutions are important and the government is prohibited from infringing on them unless it can show that the infringement was designed to meet a compelling government interest and is the least restrictive means of achieving that interest.[57] Specifically, to uphold a distinction in classification the court may not rely on an arbitrary relationship, it must find that the classification is substantially related to an

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[52] N.Y. MENTAL HYG. LAW § 33.13(c) (McKinney 2006).
[53] *Derek*, 821 N.Y.S.2d at 390.
[54] *Id.* at 389 (citing 20 N.Y. JUR. 2d CONST. LAW § 342).
[55] *Cleburne*, 473 U.S. at 439.
[56] *Derek*, 821 N.Y.S.2d at 390.
[57] *Cleburne*, 473 U.S. at 440 (citing Schweiker v. Wilson, 450 U.S. 221, 230 (1981)).

important government objective.[58]

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[58] *Id.* at 446.