

CASE NOTE: RE JS [2014] NSWSC 302

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This case involved a request made by a 27 year old man to staff at a hospital to stop providing him with life-sustaining treatment. The hospital sought a declaration from the NSW Supreme Court that it was entitled to discontinue the treatment.

JS had been a quadriplegic since the age of seven. He had needed full invasive ventilator support via a tracheotomy since that age. In 2013, following the collapse of his lung, his condition deteriorated so that he required full-time care and treatment in hospital. His quality of life was significantly impaired. JS expressed a wish for that treatment to stop on his 28th birthday.

In determining to make the declaration sought, Darke J relied upon the legal principles enunciated by McDougall J in *Hunter and New England Area Health Service v A* (2009) 74 NSWLR 88 ('A's case'). In that case, A had prepared an advance care directive stating that he would refuse dialysis. He had since developed renal failure and was being kept alive by mechanical ventilation and kidney dialysis. As in *Re JS*, the hospital sought a declaration that it would be justified in complying with his wishes.

McDougall J described A's case as being concerned 'at the level of principle, with the right of a capable adult to refuse medical treatment'.¹ In a passage relied upon by Darke J in *Re JS*, McDougall J recognised two competing principles: first, a competent adult's right of autonomy or self-determination, or the right to control his or her own body, and secondly, the interest of the State in protecting and preserving the lives and health of its citizens.² Having reviewed the authorities, McDougall J concluded that, when in conflict, the former principle should generally prevail.³

Darke J followed McDougall J's approach.

His Honour observed, on the issue of capacity, that the evidence showed that JS had capacity to make the decision concerning his treatment and that he had approached it in an apparently rational fashion.⁴ The decision to refuse the continuation of the mechanical ventilation 'was freely given and based on adequate information'.⁵

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¹ *Hunter and New England Area Health Service v A* (2009) 74 NSWLR 88, 90 [4].

² *Re JS* [2014] NSWSC 302, [6]; *ibid* 90 [5].

³ *Hunter and New England Area Health Service v A* (2009) 74 NSWLR 88, 92 [17]. His Honour recognised some possible exceptions to this principle, such as where giving priority to an adult's right of autonomy would terminate the life of an unborn foetus.

⁴ *Re JS* [2014] NSWSC 302, [21].

⁵ *Ibid* [32].

His Honour rejected the proposition that the withdrawal of the medical treatment could amount to aiding and abetting a suicide (a criminal offence), saying that the refusal of medical treatment was not within the legal concept of suicide.⁶

In accordance with the principle that a competent adult has a right of self-determination, including a right to refuse life-saving medical treatment, the Court declared that medical practitioners would be acting lawfully if they acted in accordance with JS's request that he be disconnected from mechanical ventilation.

⁶ Ibid [34]. See also *Crimes Act 1900* (NSW) s 31C.