



Disability Vignettes

Disability Vignette 1

X. is a 41 year-old science teacher at a secondary school, living independently in her own household. X. had been diagnosed with bipolar disorder, she often had negative and dark thoughts. Her close relatives were worried for her safety and initiated a guardianship procedure. Citing her scientific knowledge X. had always been reluctant to take any medications and had a very sceptical view of modern medicine in general. As a result, X. was put under partial guardianship, meaning that only her capacity to healthcare decision-making was restricted. She cannot give consent to or refuse medical treatment and her guardian makes these decisions for her.

Years later, X. was diagnosed with cancer. According to her doctors, the chances of successful treatment could not be determined as there were too many variables.

There were two options for X. The first option was to undergo aggressive treatment, which would significantly worsen her quality of life, however, would provide a chance for a successful recovery. The other option was to refuse aggressive treatment and choose conservative/palliative therapy, to live the end of her life with the highest attainable quality of life.

X. expressed her clear wish for the latter, she spoke to her guardian and told her that she would not want her loved ones to see her in terrible conditions. X. also emphasised that she had always wished to end her life in a peaceful way, without heroic efforts to lengthen her suffering. Therefore, X. wanted to refuse treatment and move into hospice care to live through the end of her life peacefully, with her loved ones.

Her guardian disagreed with X. and believed that the chance of survival overrides the suffering of shorter term aggressive treatment. Furthermore, the guardian was worried that he might be held liable for the decision to allow the refusal of treatment. The guardian asked the family members of X., but they were also divided in what would be the best decision. In the end, the guardian of X. gave consent to the aggressive treatment on behalf of X.

X. felt violated and went to court to overturn the decision of the guardian and terminate treatment.

Questions

- a) In your country, how would the court rule, would they overturn the decision of the guardian? What aspects and circumstances would the court consider? Please, provide an explanation for your answer.
- b) Would X. be allowed to stand before court on her own (without her guardian)?
- c) Would it be relevant, that X. has scientific knowledge? Would it be relevant that X. had clear and consistent wishes regarding the end of her life?
- d) Would the court consider that persons not under guardianship would be allowed to make the decision X. wished to make?
- e) How would the family's opinion be considered?
- f) Would the court's decision be different for a less important medical decisions (e.g. a dentistry treatment)?
- g) Please point out any additional aspects you find relevant for the court's decision.
- h) If possible, please reference the legal rules and case-law the court would base its decision on.
- i) We invite you to share with us your opinion on the court's likely decision. Do you consider that the legal practice should be improved?



Disability Vignette 2

B. and C. are a married couple, B. has minor, while C. has moderate cognitive disability. They lead their own household, B. is working and earns sufficient income, whereas C. runs the house and takes temporary jobs.

B. and C. had a child and during birth minor complications arose. As a result the feeding of the newborn was often problematic, B. was not able to breastfeed the baby properly.

They were discharged from hospital, however, a doctor signalled to the guardianship authority because of the cognitive disabilities of the parents. The guardianship authority initiated a child protection procedure. During the procedure, the weight of the child was found to be fluctuating and that the child required above-average attention. B. and C. admitted that the grandparents were not willing to help, and that they were not certain they could provide everything for the healthy development of their child without any support.

Due to these risks, the guardianship authority removed the child from B. and C. and put the child into foster care. At the same time, the guardianship authority applied to court to put B. and C. under partial guardianship related to their parental rights to their children. B. and C. believe that they would be able to bring up their child in a safe and healthy way, given the assistance and support they need.

Questions

- a) In your country, how would the court rule? What aspects and circumstances would the court consider? Please, provide an explanation for your answer.
- b) Would the court consider the availability of support measures instead of restriction of legal capacity in guardianship proceedings?
- c) Is it relevant that the child's needs and development were only at risk?
- d) Please point out any additional aspects you find relevant for the court's decision.
- e) If possible, please reference the legal rules and case-law the court would base its decision on.
- f) We invite you to share with us your opinion on the court's likely decision. Do you consider that the legal practice should be improved?