Landmark Right-To-Die Case at the Glendale Adventist Medical Center

by Kent A. Hansen

William Bartling wanted to live. But he did not want to be hooked up to the machine at Glendale (California) Adventist Medical Center that kept him alive by breathing for him. When his doctors at the medical center refused to turn off the machine, Bartling sued, demanding that the court order the machine turned off.

The result of this dispute turned into a major medical-legal controversy over the right of a patient to choose to die, with national media exposure given to the medical center's ethics and medical practices. The final court decision was one of the most significant yet on the right of people to resist heroic medical measures.

Bartling died Nov. 7, 1984, 23 hours before the California Court of Appeals heard his case. The court ruled anyway, in order to provide guidelines for future cases, stating that "[t]he right of a competent adult patient to refuse medical treatment is a constitutional right which must not be abridged."[1] The court held that this patient's right outweighed a "prime concern to Glendale Adventist. . . that it is a Christian, pro-life oriented hospital, the majority of whose doctors would view disconnecting a life support system in a case such as this one as inconsistent with the healing orientation of physicians."[2]

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This ruling climaxed an intense battle over Bartling's right to terminate his artificial life support, which began in April 1984 when Bartling entered the medical center suffering from several ailments. The 70-year-old retired dental supply salesman had a history of depression, alcoholism, emphysema, arteriosclerosis, angina, and an aneurysm in his abdomen. After hospitalization, his physicians noted a possible lesion on his lung and performed a needle biopsy, discovering an inoperable lung cancer. The biopsy caused his lung to collapse, and while attempting to repair it, his physicians placed Bartling on an artificial ventilator to aid his breathing.

Confined to the intensive-care unit, receiving food and water through tubes, and dependent on the ventilator, Bartling was despondent. Several times he tried to pull out the ventilator tubes, and his physicians tied his wrists with "soft restraints."

In mid-May 1984 Bartling indicated his desire to be removed from the ventilator, even though he understood this would probably mean his death. His wife Ruth hired leading patients'-rights attorney Richard Scott to assist in getting the ventilator turned off.

Scott prepared, and Bartling signed with an "X," a document releasing the physicians of the medical center from any civil liability resulting from disconnecting the ventilator and a "living will" explaining

Bartling's wish not to be kept alive by "medications, artificial means, or heroic measures."

What happened next is in dispute. Scott says that Bartling's physician agreed to turn off the ventilator if GMAC administrators agreed, and that the administrators first agreed but then changed their minds. The Glendale Adventist Medical Center attorney, William Ginsburg, says that the medical center and the physicians have always refused to terminate life support. The spokesman for the medical center, James R. Gallagher, says Bartling's request would have been honored if it had been "consistent, clear, and unambiguous."

When his request was refused, Bartling and his wife sued in Los Angeles County Superior Court, seeking $15,000 per day in damages for unwanted medical treatment and $10 million in punitive damages in a companion civil suit, charging civil-rights violations and battery.

The Glendale Adventist Medical Center aggressively defended the suit. In a June 7, 1984, press release on the case, Glendale Adventist Medical Center said, "to honor his [Bartling's] request to turn off life support systems at this time would put the Medical Center in the position of abetting suicide and would be a violation of moral and ethical principles which the hospital and medical staff are dedicated to uphold."

In opposing Bartling's request for an injunction turning off the ventilator, the medical center argued several points:

1. Bartling was ambivalent on the issue, inconsistently expressing a desire to live and a desire to die. The hospital's attorney noted that Bartling liked to eat ice cream, watch football games, and "ogle" nurses. He had mentioned to his nurse that his wife was "crazy" when the nurse described the nature of the suit his wife had brought to end his care. The hospital also presented evidence that Bartling had on several occasions frantically gestured to nurses to replace the ventilator tube when it had been removed from his throat for cleaning.

2. The interest of the state in preserving life outweighed Bartling's desire to die.

3. The professional, ethical, and moral integrity of the hospital and its physicians would be compromised if they were ordered to facilitate Bartling's death.

4. Even though removing him from the ventilator at that time would kill him, Bartling's physicians believed he could be "weaned" from the ventilator, taught to breathe on his own again, and could have one to three years of normal life remaining.

5. Bartling's mood shifts and depression made "questionable" his ability to make medical decisions regarding his treatment.

Media attention to the case became intense. The 60 Minutes story was nationally broadcast in October. On October 29 the Phil Donahue Show featured the case.

On June 6, 1984, Bartling lost his attempt to get a temporary injunction, and a hearing date of June 22, 1984, was set for a permanent injunction. By this time, reporter Mike Wallace and a film crew for the CBS program "60 Minutes" were on the story. They taped and later televised a deposition taken by attorneys for Bartling and for Glendale Adventist Medical Center in the intensive-care unit, in preparation for the court hearing. Scott intended to use the deposition to show that Bartling was competent and capable of making the decision to turn off the ventilator. The transcript of the deposition is as follows:

Scott: "Mr. Bartling, we are now going to do this deposition which I have explained to you this morning. Do you understand that you have no obligation to tell the truth? Yes? You need to nod your head so this girl over here can see you. Mr. Bartling, do you want to live? (Yes.) Do you want to continue living on that ventilator? (No.) Do you understand that if that ventilator is taken

away that you might die? (Yes.) All right, I have no further questions."

Ginsburg: "Mr. Bartling, are you satisfied with the care that the nurses have been giving you here at Glendale? (Yes.) That's a yes. And have they been nice to you? (Yes.) And you're not in any pain, are you? (No.) And you don't want to die, do you? (No.) You understand that if that ventilator is removed that you might die? (Yes.) I have no further questions." End of tape. End of deposition.

Following the June 22, 1984, Superior Court hearing, and another hearing in July, Judge Lawrence Waddington denied Bartling's request, stating he believed the physicians who said he would live up to three more years if he was gradually weaned from the ventilator. Waddington ruled that California law permitted cutting off life-support systems only for comatose, terminally ill patients whose doctors approve.[3]

Scott appealed Judge Waddington's decision to the California Court of Appeals. He also tried to arrange a transfer of Bartling to a medical facility that would allow him to disconnect himself from the ventilator. The transfer attempts were unsuccessful, apparently because other hospitals were afraid of being sued and Bartling's Medicare benefits were nearly exhausted.[4] According to Gallagher, the costs of Bartling's hospital care amounted to $1,070 per day and eventually totaled $540,000. However, the medical center was limited by law to collection of less than $40,000 in Medicare benefits for Bartling.

In July, Bartling's physicians attempted to wean him from the ventilator, taking him off the machine for intermittent periods of up to five hours. The attempts were unsuccessful.

Media attention to the case became intense while the parties waited for the Court of Appeals to hear the case.

The "60 Minutes" story on the case was nationally broadcast in October. On October 29, 1984, the "Phil Donahue Show" featured the case, and Mrs. Bartling and Attorney Scott appeared on the program. Stung by criticism of its position on the "Donahue" show, the medical center issued a three-page press release in rebuttal. Glendale Adventist Medical Center denied charges by Mrs. Bartling that it kept an armed guard at the door of Bartling's room, continually held Bartling in wrist restraints, had profited financially from Bartling's medical condition, had refused consistent requests by Bartling to turn off the ventilator, and had refused to allow Bartling to be discharged or transferred to another facility.

On November 6, 1984, at 2:40 p.m., the day before the appeals hearing, Bartling died of emphysema. In the press release announcing Bartling's death, medical center vice president Glen Detlor said, "We believe the medical professions should seek to uphold and strengthen a commitment to life. That is what we tried to do during Mr. Bartling's hospitalization."

The Court of Appeal held that the right of a competent adult to refuse medical treatment is constitutionally guaranteed and outweighs the interests of the hospital and doctors in giving treatment.

The next day, the attorneys argued the case before a three-member panel of the Court of Appeals. Both sides argued that the court should rule even though Bartling was already dead, to "formulate guidelines which might prevent a reoccurence of the tragedy that befell Mr. Bartling."

On December 27, 1984, the court announced its ruling, a unanimous opinion, written by Justice James Hastings. The court concluded that:

"Mr. Bartling knew he would die if the ventilator were disconnected but nevertheless preferred death to life sustained by mechanical means. He wanted to live but preferred death to his intolerable life on the ventilator."[5]

In a sweeping statement of law, the court

then held that the right of a competent adult to refuse medical treatment is constitutionally guaranteed and outweighs the interests of the hospital and doctors in giving treatment. The court stated:

"We do not doubt the sincerity of... [Glendale Adventist Medical Center and the physicians'] moral and ethical beliefs, or the sincere belief in the position they have taken in this case. However, if the right of the patient to self-determination as to his own medical treatment is to have any meaning at all, it must be paramount to the interests of the patient's hospital and doctors."[6]

The court also ruled that the Glendale Adventist Medical Center and Bartling's physicians would not have been civilly or criminally liable for carrying out his request and removing the ventilator. As to the argument by Bartling's physicians that turning off the machine would have been "tantamount to aiding a suicide," the court stated:

All five of the physicians attending Bartling said that if he had not already died, they would have refused to carry out the court order to terminate the life support, even if it meant they would be punished for contempt of court.

"This is not a case...where [the medical center and the physicians] would have brought about Mr. Bartling's death by unnatural means by discontinuing the ventilator. Rather, they would have hastened his inevitable death by natural causes."[7]

The Glendale Adventist Medical Center received criticism for its stance in the case even before the Court of Appeals ruling. George Annas, an attorney and ethicist with the Boston University Schools of Medicine and Public Health, who helped write the brief supporting Bartling's position, was quoted by the *American Medical News* as saying that the medical center had taken an unusual position. He noted that most hospitals side with the patient in life-support termination cases, asking for an order supporting the patient and relieving the hospital of liability. Why the medical center opposed Bartling's wishes, he said, "is really the $64,000 question."[8]

In a scathing criticism of the trial court's decision denying Bartling's request, published in *The Hastings Center Report*, Annas wrote:

The case illustrates how fear of liability can cause a hospital to alter its traditional role of offering services to willing patients, into one of forcing treatment on unwilling patients. It also illustrates how physicians, hospital administrators, and even judges can see themselves as responsible for the actions of a competent patient, and how their ambivalence about the patient's decision can cause them to compromise or abdicate their social roles to the patient's profound detriment.[9]

In a graphic rebuttal to Annas' criticism, prepared for *The Hastings Center Report*, William Ginsburg, the attorney for the medical center, said that Annas was advocating euthanasia against a patient's will or in the presence of ambivalence without consideration of the rights of medical personnel "who must participate in the killing process."[10] Ginsburg argued that it would be tragic if the law compelled turning off life support when the patient is still unsure whether he wants it turned off. "[I]t is a tragic thought to imagine a physician disconnecting the ventilator watching Bill Bartling asphyxiate or tumble into shock or heart failure, frantically gesturing for the ventilator to be replaced and the physician saying, 'sorry, Bill, you signed a declaration.'"[11]

The medical center initially considered appealing the decision to the California Supreme Court. It later reconsidered and asked for a rehearing by the Court of Appeals in the hope of obtaining a ruling that private hospitals could transfer ambivalent terminally ill patients to public institutions if life-support systems were to be cut

off. Gallagher, spokesman for the medical center, said this would place responsibility for carrying out court orders on government-paid personnel. The medical center later dropped the request.

The ability to transfer such a patient was important to the Glendale Adventist Medical Center, according to Gallagher, because all five of the physicians attending Bartling said that if he had not already died, they would have refused to carry out the court order to terminate the life support, even if it meant they would be punished for contempt of court.

When asked if the medical center would have done anything differently in retrospect, Gallagher said that the convening of a hospital ethics committee to consider the matter might have proved helpful. Such committees involving physicians, ethicists, clergy and attorneys are increasingly recommended by ethicists and some attorneys as a forum for resolving difficult moral questions posed by the use of sophisticated medical technology to artificially support life. The medical center did not explain its reasons for not using such a committee. George Annas maintains that such a committee could have been "helpful and decisive" and might have kept the case out of court.[12]

The Bartling case certainly illustrates the issues such hospital ethics committees will face in the future.

NOTES AND REFERENCES

1. *Bartling v. Superior Court*, 163 Cal.App.3d 186, at 195 (1984).
2. *Ibid.*
3. Boyer, "Rights of the Dying Expanded: Patients Can Refuse Treatment, Court Says." *Los Angeles Times* (December 28, 1984), Sec. 1, pp. 1, 3.
4. Smith, "Life Support: Seriously Ill Man Being Weaned Off Respirator While Legal Battle Goes On." *Glendale News-Press*, (July 6, 1984), Part A. p. 1.
5. *Bartling v. Superior Court*, 163 Cal.App. 3d 186, 189-190 (1984), citing *Dority v. Superior Court*, 145 Cal.App. 3d 273, 276,193 Cal.App. 288 (1983).
6. *Ibid.*, p. 195.
7. *Ibid.*, p. 196.
8. "Key Ruling Awaited on Terminating Treatment," *American Medical News* (December 7, 1984), pp. 1, 61-63.
9. Annas, "Prisoner in the ICU: The Tragedy of William Bartling," *The Hastings Center Report* (December 1984), pp. 28, 29.
10. Ginsburg, "The Real Tragedy of William F. Bartling: A Lack of Understanding," manuscript for *The Hastings Center Report*, (written January 1985), p. 4.
11. *Ibid.*, p. 5.
12. Annas, "Prisoner in the ICU: The Tragedy of William Bartling," *The Hastings Center Report* (December 1984), p. 29.