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Criminal Law - Manslaughter Conviction for Failure To Provide Medical Aid to Child Because of Religious Belief Reversed - Craig v. Maryland, 155 A.2d 648 (Md., 1959)

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employees under the contract. Terseness on the part of district court and absolute silence of the circuit court prohibit analysis of the nature of the peculiar promise involved in the *Jenkins* case.

It is readily seen that the Virginia court has worked an implied enlargement in the scope of the term "promise." The court did so apparently without notice of the fact or in the belief that a variation in form of a statement of obligation is secondary in importance to its nature as a recital of liability assumed. For this reason, the decision will probably have little weight in a jurisdiction choosing to be more analytical when called upon to ascribe liability predicated upon a similarly constructed "understanding." Until such future judicial examination, it remains an abnormal specie of one of the basic legal concepts, with little reason behind its creation—a mutation in the law of contracts.

CRIMINAL LAW—MANSLAUGHTER CONVICTION FOR FAILURE TO PROVIDE MEDICAL AID TO CHILD BECAUSE OF RELIGIOUS BELIEF REVERSED

The defendants, husband and wife, were convicted of the crime of involuntary manslaughter under a Maryland statute which provides that the father and mother are jointly and severally charged with the "support, care, nurture, welfare and education of their minor children."[1] The state charged that the defendants were guilty of gross negligence in not having furnished medical attention to their deceased minor child. The defense contended that they were conscientious believers in the Church of God and based their belief in divine healing, and when their child became sick they cared for it in accordance with the teachings of the Bible,[2] and that therefore, they were not guilty of any neglect of duty owing to their child. The court of appeals reversed and remanded the cases for a new trial, holding that the state's evidence was not sufficient to show that the gross negligence of the parents was the proximate cause of the child's death. *Craig v. Maryland,* 155 A.2d 648 (Md., 1959).

At common law, a parent, or anyone standing in such a relationship had the duty of furnishing necessaries to his minor unemancipated child.[3] Medical attention, when needed to preserve life or health, is

[1] Md. Code (1957) Art. 72A, § 1.

[2] "James says, if anyone is sick let him call for the elders of the church, and let them, pray over him, anointing him with oil in the name of the Lord, and the prayer of the faith shall save him." Epistle of St. James, 5:14, 15 (King James version).

[3] Mitchell v. Davis, 205 S.W.2d 812 (Tex., 1947); State v. Barnes, 141 Tenn. 469, 212 S.W. 100 (1919); Wallace v. Cox, 136 Tenn. 69, 188 S.W. 611 (1916); Owens v. State, 6 Okla. Crim. 110, 116 Pac. 345 (1911); State v. Chenoweth, 163 Ind. 94, 71 N.E. 197 (1904); Regina v. Anstan, [1893] 17 Cox. C. C. 602.

classified as a necessity.[4] A breach of this duty may result in a conviction for homicide. While the indictment usually includes murder, a finding of involuntary manslaughter based upon culpable negligence is generally the result.[5] The earliest English case so holding was *Regina v. Smith*,[6] in which a master was found guilty of manslaughter for his failure to provide medicines to an apprentice. Several states have passed statutes which codify the common law duty of furnishing medical cure but many of these statutes are the basis of a misdemeanor rather than manslaughter.[7] Where the lack of medical attention is a result of parental neglect, the courts have had little difficulty in disposing of the case.[8] However, when the case deals with otherwise attentive parents whose religious philosophies account for their failure to provide assistance which results in prosecution for criminal neglect, the courts have had great difficulty in applying both the common law and its statutory equivalent.

Religious belief as guaranteed by the First and Fourteenth Amendments to the Constitution of the United States is not an absolute right. It is the right to worship as one pleases, but does not extend to practices inconsistent with the safety or peace of the state which includes the protection of the lives and health of its children.[9] In *Reynolds v. United States*,[10] the court held that a party's religious belief cannot be accepted as a justification for his committing an overt act made criminal by the law of the land.[11] The Court further stated that to hold otherwise would be to permit every citizen to become a law unto himself whereupon government could exist only in name. It is quite clear that no man can be permitted to set up his religious belief as a defense to the breach of a duty, when such neglect is clearly a violation of the law of the state.[12] In the leading case of *People v. Pierson*[13] which involved a conviction of a parent whose defense was a belief in divine healing, the court held

[4] State v. Chenoweth, 163 Ind. 94, 71 N.E. 197 (1904); People v. Pierson, 176 N.Y. 201, 68 N.E. 243 (1903); Regina v. Smith, [1837] 8 Cur. & P. 153.

[5] E.g., State v. Barnes, 141 Tenn. 469, 212 S.W. 100 (1919).

[6] [1837] 8 Cur. & P. 153.

[7] E.g., N.Y. Penal Code 482 (Supp., 1959) provides: "A person who, wilfully omits, who is able to do so, or without lawful excuse, to perform a duty by law imposed upon him to furnish food, clothing, shelter or medical or surgical attendance to a minor. . . ."

[8] E.g., Stehr v. State, 92 Neb. 755, 139 N.W. 676 (1913).

[9] Prince v. Massachusetts, 321 U.S. 158 (1944); Reynolds v. United States, 98 U.S. 145 (1878); People v. Pierson, 176 N.Y. 201, 68 N.E. 243 (1903).

[10] 98 U.S. 145 (1878).

[11] Ibid.

[12] E.g., Mitchell v. Davis, 205 S.W.2d 812 (Tex., 1947); People v. Pierson, 176 N.Y. 201, 68 N.E. 243 (1903).

[13] 176 N.Y. 201, 68 N.E. 243 (1903).

that such a statute being directed at the acts and not the beliefs of individuals, and involving the prevention of a public wrong was clearly a valid exercise of the police power of the state.[14] The court went on to say:

> We place no limitations upon the power of the mind over the body, the power of faith to dispel disease or the power of the Supreme Being to heal the sick. We merely declare the law as given us by the legislature.[15]

The state, as *parens patriae*, may legislate for the protection of children.[16] Further, it has been held that the term "medical attendance" as used in a statute holding a parent criminally liable for the neglect of furnishing such aid to a child is attendance by a duly licensed physician, and not one who, because of his religious belief, believes in divine healing accomplished by prayer.[17]

In considering a homicide caused by parental omission in furnishing medicines, the English courts have disposed of cases involving religious overtones and those purely of neglect in the same manner. The result has been conviction for manslaughter.[18] In *Regina v. Senior*,[19] the court held that, though a father's religious scruples may be against such aid, a failure to provide medical care amounted to neglect, which was the basis of a conviction of manslaughter. The American courts have not treated cases involving religious overtones the same as those involving other parental neglect. While the courts have repeatedly handed down convictions of manslaughter for parents who simply neglect to provide medical treatment for their children,[20] a diligent search has failed to turn up one higher court conviction involving a manslaughter indictment of parents whose religious philosophies have caused their failure in furnishing medical assistance to a seriously ill child. Yet, as in the case of *State v. Chenoweth*,[21] where the court refused to decide the question because of the record on appeal, the common law doctrine of parental liability has been affirmed and the defense of religious belief denied. Further, numerous convictions for misdemeanors based upon statutes have repeatedly

[14] See Prince v. Massachusetts, 321 U.S. 158 (1944); Mitchell v. Davis, 205 S.W.2d 812 (Tex., 1947); Owens v. State, 6 Okla. Crim. 122, 116 Pac. 345 (1911); State v. Chenoweth, 163 Ind. 94, 71 N.E. 197 (1904).

[15] 176 N.Y. 201, 68 N.E. 243, 247 (1903).

[16] Mitchell v. Davis, 205 S.W.2d 812 (Tex., 1947); People v. Pierson, 176 N.Y. 201, 68 N.E. 243 (1903).

[17] People v. Pierson, 176 N.Y. 201, 68 N.E. 243 (1903).

[18] Queen v. Senior, [1899] 1 Q.B. 283; Reg. v. Cook, [1898] 62 J.P. 715.

[19] [1899] 1 Q.B. 283.

[20] E.g., Stehr v. State, 92 Neb. 755, 139 N.W. 676 (1913).

[21] 163 Ind. 94, 71 N.E. 197 (1904).

denied the religion as a defense.[22] There are two frequently quoted lower court decisions which held parents who believed in divine healing guilty of involuntary manslaughter for the death of their minor child. The first of these is *Commonwealth v. Hoffman*[23] in which it appears that the child died of *scarlet fever* and the real issue presented to the jury was the protection of society from a contagious disease. Indeed, the court instructed the jury that the case in no sense whatever involved a question of Christian faith or of the efficacy of prayer, but was rather a question of the State's policy to protect society and regulate medicine. The instruction to the jury was as follows:

> If, however, the theory upon which the defense in this case rests be correct, then this policy of our state is wholly a mistake and its legislation along the line of that policy a superfluity. . . . The question raised by this defense is one in which every community is interested. *No man liveth to himself alone and no man dieth to himself.* The danger of a contagious disease of the nature of scarlet fever lies at the very foundation of our system of quarantine. . . .[24]

In the case of *Commonwealth v. Breth*,[25] it appears that the defendant, further, stated that he did not disbelieve in medicine, but believed that it was not essential. The court distinguished this case from those where the defendant disbelieves at all times and under all circumstances in the use of medicine, though it does appear that the defendant did believe in divine healing, he also felt that medicine would have been beneficial to his child.[26]

The lack of manslaughter convictions in American courts is the result of a justifiedly sympathetic feeling for those whose religious philosophy has caused their plight. Further, the American courts have had to wait and resolve the religious question in the light of our Constitution, where the English courts had long resolved the problem. The obvious desire for an acquittal is best illustrated in the case of *Bradley v. Florida*[27] where the court in resolving the question of causation stated that the definition of manslaughter contained in the statute does not cover such a case,[28] since it was not fairly proved that any "culpable negligence" of the father caused the killing of the child. The court's reasoning being

[22] Beck v. State, 290 Okla. Crim. 240, 233 Pac. 495 (1925); State v. Barnes, 141 Tenn. 469, 212 S.W. 100 (1919); Owens v. State, 6 Okla. Crim. 122, 116 Pac. 345 (1911); People v. Pierson, 176 N.Y. 201, 68 N.E. 243 (1903).

[23] 29 Pa. Co. Ct. 65 (1903).

[24] Ibid., at 72.

[25] 44 Pa. Co. Ct. 56 (1915).

[26] The record does not disclose an appeal for either Hoffman or Breth.

[27] 79 Fla. 651, 84 So. 677 (1920).

[28] Fla. Gen. Stat. (1906) § 3209; the statute made the killing of a human being by the act, procurement, or culpable negligence of another, a felony called manslaughter.

that the death of the child was caused by the accidental burning in which the father had no part; and that the absence of medical attention did not cause "the killing" of the child even if the failure or refusal of the father to provide medical attention was "culpable negligence." And again in the *Beck* case, while the court affirmed the conviction of a misdemeanor, it held the punishment excessive and modified it by taking off the jail sentence and leaving a $50 fine. It appears that the child died of lockjaw.

In the *Craig* case, the court followed the majority view in denying religion as a defense, but held that the evidence was not sufficient to establish the element of causation. The evidence presented, which gave the appellate court its problem was the testimony of medical witnesses called to give expert opinions. The principal question put to them was whether or not appropriate treatment would have resulted in recovery. The response to this was that if appropriate treatment had been given soon enough and if the patient responded, an excellent chance of recovery would have been had. The court's answer was that since parents have a reasonable discretion in when to call in medical aid, and that since nothing in the testimony would sustain a finding that the parents were negligent during the early period of the disease, causation had not been proven. The court further considered that the doctors stated that, at the last stages of the illness, a cure would have probably been ineffectual. Yet, the record discloses that the child had extensive pneumonia of both lungs in an advanced state, with a complication of acute suppurative arthritis in the elbow joint and some hemorrhage in the adrenals. It was further shown that the child was ill for eighteen days before its death.

It would appear, from what has been said, that though religion is held not to be a defense, that it is nevertheless the *best* defense. If this is not so, then why is it that the courts expect such exactness of medical science in a case involving religious overtones and not in one of pure negligence.

CRIMINAL PROCEDURE–STATE ALLOWED PEREMPTORY CHALLENGE OF PREVIOUSLY ACCEPTED JUROR AFTER DEFENSE EXHAUSTED PEREMPTORY CHALLENGES

The defendant was indicted for murder. During the examination on voir dire, after the defendant had exhausted his peremptory challenges, the prosecution asked the court to excuse a juror that had already been accepted by both sides. The court excused this juror over the defendant's objection. After being convicted of murder in the first degree, the defendant appealed, contending that the trial court committed error in allowing the state to excuse a juror already accepted after defendant's peremptory challenges were exhausted. The Supreme Court of Arkansas affirmed the judgment holding that there is no valid reason to refuse the