



Case comment on *esabunor & anor V faweya & 3 ORS*

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Abstract

The question of who has the right to make healthcare decision for the minor has been a subject of heated legal controversy over the years. While the natural school of thought opined that parents have absolute legal right to make decision in respect of their children's healthcare, other schools of jurisprudence are of the view that the state right to minor's healthcare supersedes parental right. In Nigeria, a recent Supreme Court authority decided to the effect that in cases of emergency the State has absolute right to take over the minor for medical treatment without parental consent. To this end, this Case comment shall examine the parameters utilize by the Court to reach its decision, it shall analyse whether correct reasoning were employed and whether the conclusions therein is justified. It found out that in the *Esabunor's* case under analysis, the State had fulfilled its role of preservation of the life of a minor albeit using an irregular procedure. The procedure appraised was the use of *ex parte* application at the Magistrate Court to transfuse blood product on the minor without the Court hearing from the parents or considering parent's alternative treatment choice or even calling for independent medical expert analysis before making the aforesaid order. The Case Comment recommended that in future cases the Court should take into consideration the rights of loving, caring and attentive parent's in shouldering their God given responsibility for minor's healthcare, and that Court should only step in to give healthcare directives where the parents have abysmally failed or neglected to care for their minor. It further Stated that the State should not seize children from their natural parents without complying with the eight questions or conditions prescribed for State's intervention.

Keywords: *esabunor & anor V faweya*, children's healthcare, legal controversy

Introduction

1. Every parent desires their children to grow up in the family cherished environment and live a healthy life, but children sometimes lose their parents as the first line of protection^[1]. because of separation for various reasons which may include being placed in alternative care due to parents' refusal to take blood product as treatment for the child's ailments. In Nigeria, there are cases where the issuance of emergency protection orders by the State takes away the children from their parents or relatives into the hands of people other than the children's parents to be given medical treatment^[2]. The caliber of optional care given to a minor is critical to child's well-being especially if the child is under the age of three years. From various researches,^[3] it is evident that children in long term residential care are at risk of impaired cognitive, social and emotional development and so there arises a need to protect the children's' fundamental human right to health.
2. It is believed that usually parents have the capacity and wisdom to make accurate and informed decisions that affect their children's life^[4]. This is premised on the fact that in most cases parents bear the longtime consequences when government makes healthcare decisions for their children^[5]. Naturally parents who are caregivers would presumably make decisions on health issues that will be beneficial to the minors in short and long term basis. In spite of the inherent power of parents to make healthcare choices for their minors, it is contended that parents lack the required power to

solely make decisions regarding some medical procedures as well as choosing for the minor the right to die as a martyr^[6]. The argument implies that parents' right to make decisions for their children is not inviolable.

The Case Comment proposes that parents play a major role in the creation, formulation and molding of a child's life and that parental care positively assists a child's physical, intellectual, emotional, social behaviour, and overall well-being.

Facts of *Esabunor's* Case

1. The 2nd appellant is the mother of the 1st appellant. Within a month of his birth he took ill. The 2nd appellant took him to the Clinic for medical treatment. The 1st respondent is the medical doctor who treated the baby and concluded that the baby urgently needed blood transfusion. The 2nd appellant and her husband withheld consent on the grounds that the Holy Scriptures commands abstention from blood^[7]. They further contended that there were several hazards that follow blood transfusion such as contracting AIDS, hepatitis amongst others. Instead, they opted for non-blood medical management of their baby and the 1st respondent was unyielding, he rather contacted a Counsel who without any written authorization and purporting to be acting for and on behalf of the Commissioner of Police, Lagos State moved an originating Motion *Ex parte* before the 5th respondent (a Chief Magistrate) brought under the Statute^[8] and

- seeking that the medical authorities of the clinic be allowed and be permitted to do all and anything necessary for the protection of the life and health of the baby and for such other or orders as the court deems fit. After hearing counsel, the court without notice to the Appellants who were at all material times at the clinic and without investigation granted the relief as prayed.
2. The Respondents, acting on the order of the Chief Magistrate, forcibly took custody of the 1st Appellant and transfused blood on the baby. Following this development, the 2nd appellant went to High Court and applied for the review of the Magistrate court proceedings, setting aside of the order and damages for infringement of parental responsibility^[9]. The case was dismissed. The appellant further appealed to Court of Appeal who held that the issues in the case were academic. Undeterred, the appellants appealed to the Supreme Court, where the issues formulated included: whether the Magistrate's Court proceedings was conducted in breach of appellants' right to fair hearing; whether the refusal of blood transfusion amounted to attempt to commit a crime or to allow 1st appellant to die. Whether the lower court was right to save the life of the minor and ignored the parental refusal based on grounds of their religion and conscience.
 3. The appellant's Counsel argued that the Chief Magistrate's Court exceeded its jurisdiction and that there were fundamental errors of law on the face of the record which the High Court failed to examine, and that the Court of Appeal instead of determining the Chief Magistrate's jurisdiction went on to determine the duty of Police to prevent commission of crime. He further argue that the refusal of the Court of Appeal to pronounce on jurisdiction amounted to misdirection by non-direction and that since the 2nd appellant was not heard before the originating motion *ex parte*, the proceedings were null and void^[10]. He contended that no matter how well conducted a proceeding is, everything done is invalid when there is no service on the party affected by the proceedings. He argued that to constitute fair hearing a person accused of a crime should know what is alleged against him, be present when every evidence against him is tendered and be given a fair opportunity to correct or contradict such evidence. He noted that 2nd Appellant was never invited for questioning by the Police at any time and that the Court did not hear from the 2nd Appellant before making such a weighty order. On the right of a parent to consent, he said that the right to give or refuse consent to medical treatment has been recognized worldwide as an inalienable right. He contended that 2nd appellant's different opinion as to method of treatment cannot amount to commission of crime or an attempt to commit one. He placed reliance on *Okonkwo's* case^[11], and submitted that the consent of parents on behalf of their minor is mandatory before any treatment can be embarked upon. He finally said the view of the Court of Appeal that a parent's choice of medical treatment should be derogated from should not be allowed to stand.
 4. The learned Counsel for the 1st and 2nd respondents argued that the Court of Appeal had examined the proceedings that had been removed to the High Court for the purpose of being quashed and found that the High Court was right to have held that 5th respondent did not act in want of jurisdiction. He further submitted that 4th respondent obtained valid court order for treatment before 1st appellant was infused blood, thus there was no infraction of 2nd appellant's right of consent and no justification for award of damages. The 3rd to 5th respondents' counsels submitted also that the 5th respondent made the order in the exercise of his court's inherent jurisdiction to prevent commission of an offence^[12], and that there was enough evidence before the court to act. They further contended that the act sought to be quashed has been carried out in that the 1st appellant has been transfused with blood by the 1st respondent in compliance with the 5th respondent's order. They further submitted that they were no live issues thus the appeal should remain dead and buried.
 5. The Learned Counsel for the 5th Respondent further submitted that Chief Magistrate was empowered to prevent commission of a crime^[13]. She observed that the right of fair hearing of 2nd appellant in the hearing of *ex parte* application had not come up for determination, but that what was at play was investigation of probable violation of the civil right of the child in respect of which 2nd appellant was a suspect. On what the court should do when confronted with having to balance the right of a child to life against the right of his parent to veto such right in vindication of religious conscience, she contended that the overriding consideration should be what is in the best interest of a child. Counsel for 5th respondent submitted that a child is incapable of personally exercising right to life and right to privacy hence the State intervenes through the Criminal Code^[14] to protect the vulnerable persons from the abuse of its rights by those *in loco parentis* over them.
 6. The Supreme Court^[15] held that the Court of Appeal did not abandon the issue of Chief Magistrate but they found that there was no basis which the High Court could have granted the relief of certiorari. In the record of appeal^[16] the Justices of the Court of Appeal held: "I find nothing wrong with the processes at the Chief Magistrate Court since they conveyed to the court the notice of the fact that a crime was about to be committed. The purpose for which they were filed was accomplished; they were processes in criminal law."^[17] The Supreme Court held that the Magistrate's Court had jurisdiction. It further held that the Chief Magistrate Court procedure may be inelegant but it was so done by police in order to prevent commission of crime, a procedure that is based on criminal law and the essence was to invoke the jurisdiction of the court. The Supreme Court relied on the Constitution^[18] to state that the police shall have such powers and duties as may be conferred upon them by law.
 7. The Court further relied on section 4 of the Police Act 2004 which provides that the police shall be employed for the prevention and detection of crime the apprehension of offenders, the preservation of law and order, and stated that while every person has a right to life, the police are to protect right to life and prevent acts leading to loss of life. The Court held that 5th respondent in the circumstance had jurisdiction to preside as he did and made the order he made.

On whether there was lack of fair hearing, the Court conceded that natural justice demands that a party must be heard before the case against him is determined, but went on to say that the Magistrate's orders were interim orders made ex parte due to the urgency of the matter. That the purpose of the order was to stop 2nd appellant from committing offence/crime. That her civil rights/obligations including right to fair hearing would come up only when she is charged to court for an offence. It is only then that she is entitled to fair hearing and not before or at an interim stage or when still in the investigation stage and not charged with an offence.

8. On what consideration the court should take on issues involving religion, medicine and law, the court held to the effect that Adults have the full right to accept or reject medical treatment and the healthcare professionals are duty bound to respect the freedom of choice. But that when it involves a child, a different law shall apply and this is so because a child is incapable of making decisions for himself and the law is duty bound to protect minors from abuse of his rights as he may grow up and disregard parental religious belief. The court further held that when a parent or guardian refuses blood transfusion or medical treatment for her child on religious grounds, the court should step in to consider the baby's welfare (saving life) and the best interest of the child before a decision is taken and that these considerations overweighs any religious beliefs and the administration of blood transfusion especially in life threatening situations should be allowed.

Critical Analysis of Esabunor's Case

1. In this case, the State responsibility to the child's healthcare was paramount; the State acted timeously to save the life of the child in line with provisions of the criminal law that empowers the State to prevent commission of a crime. But there are critical issues arising from this case for meticulous analysis to wit:

- a. The 2nd appellant was not interrogated by the Magistrate of the reason of her refusal to accept blood transfusion for her baby before the order of transfusion was made by the Chief Magistrate. (Breach of Fair Hearing)
- b. There was gross violation of parental right (Abuse of Parental Autonomy)
- c. Inconclusive Decision on whether Parental Refusal amount to Crime
- d. The need for Court to make genuine findings before issuance of the Ex parte/Emergency orders
- e. Qualifications for Emergencies and the Parameters for State Intervention not utilized in Esabunor's case.

2. Breach of Fair Hearing

Fair hearing means hearing from both parties before taking a decision. The judge is an impartial umpire that is obligated to hear from both parties, make research before pronouncement of his decision. UNICEF advocates that before decisions are taken on a child by parties other than the child's parents there must be engagement in a democratic manner that respects and takes in consideration the families' knowledge and experience in the upbringing of their child ^[19].

The 5th respondent did not hear from the 2nd appellant (the child's mother) her reason for objecting blood transfusion

and as to whether she had an alternative treatment for the child. He believed completely the one side complaint laid by the 1st respondent. In *Georgetown's* case earlier discussed the Judge in the case, called the husband of the woman whom the clinic sought to administer blood transfusion. The Judge heard his religious objection. He gave him fair hearing before taking a critical decision.

This element of fair hearing is lacking in Esabunor's case. The court's view that the right to fair hearing had not come up puts the law upside down. The Court's reason for making an order for blood transfusion was to prevent an attempt to commit a crime by 2nd Appellant. The imputation of the commission of a crime is a very serious matter. The right of the 2nd Appellant to be heard before such imputation can be made cannot be overemphasized. There was actually no evidence that the 2nd appellant was ever invited for questioning or investigation by the police. The court did not hear from her before making such a weighty and fundamental imputation of crime against the 2nd appellant. The right to be heard is a fundamental and indispensable requirement of any judicial decision. The judge cannot assume an answer as has been done in the instant case without a hearing. The court actions may be justified as done as part of State responsibility under emergency to save life.

3. Violation of Parental Right (Abuse of Parental Autonomy).

Parental autonomy right is a natural right and is also given a statutory support in the CRA ^[20]. Section 7 of the Act provides that parents shall provide guidance and direction in the exercise of the child's right to freedom of religion and conscience while having regard to the evolving capacities and best interest of the child. Section 7 (3) provides that the duty of parents to dictate the child's religion shall be respected by persons, bodies, institutions and authorities. Section 8 provides for parental right of supervision and control of their children in the family and Section 20 corroborate the same point.

In the instance case there was violation of the parental right to choose child's healthcare when the court ordered blood transfusion without fair hearing. In line with Natural law, parents are the best caretakers of their children unless proven unfit. In the case under analysis, the 2nd appellant was not proven unfit to care for her baby. She had taken care of the child from birth, she was a dutiful mother, she breastfed the baby from birth, performed all other domestic needs for the child. She noticed the baby was sick and took him to the hospital, she did not try home medication; she believed the clinic had professionals who are capable of taking care of the child. She had high regard for the training and abilities of the healthcare providers. She sincerely appreciated the doctor who had used his skill to deliver her of the 1st appellant. The only issue she differed and which also is her fundamental medical right was the mode of treatment which was contrary to her religious conscience and belief.

Parental responsibility has judicial support in the case of *Meyer v Nebraska* ^[21]. In this case, the US Supreme Court upheld a parent's power to supervise their child in the way that is fair and according to their financial stance. The case is an authority for parents to make decisions concerning any subject matter affecting their minors. It is submitted that when the parents are concerned, loving, caring and are well

informed of healthcare choices the Doctor must give a leeway to make a choice. Dr. Kelly wrote that parents of minors and the next of kin of unconscious patients have in their power the obligation to interpret the will of the patient – physicians should accept and respects their wishes; that he did not admire the moot court assembled to remove a child from his parent’s custody ^[22].

It is a common practice by physicians that if parents do not consent for the transfusion of blood product for their child, court order is always procured. According to an author, this position however lacks fundamental consistency and harmony, he stated that the court cannot by taking away the right of parents to make medical decision for their children in consonance with their religious belief assign a different religion to the children, as children always follow the religion of their parents ^[23].

Commenting on the implications of the State or Court authorized medical treatment that forcibly takes away the right of parental responsibility, a College Lecturer wrote with regard to forcing transfusions on adults and children:

Where State invalidates the parents’ obligation to make healthcare decision for their children, it slowly becomes despotic. It was indeed by the taking-over of the German children into the Hitler Youth movement that freedom and privacy were finally suppressed in Nazi Germany. This is not mere fanciful speculation. Freedom is a precious and comparatively rare possession, to be jealously guarded in those countries where it exists. Any one encroachment on individual liberty is one too many ^[24].

The principle of choice in medical treatment is better than forced blood transfusions. Even where the doctor sincerely believes a child needs a blood transfusion does not translate to the fact that other alternate medical treatment will not cure the child. He may argue that transfusion offers more likelihood than alternative therapies. In this wise, the Council of Judges in the United States directed: “Where a physician prescribe a medical treatment having probability of success and the parent reject same and proposes another which has lesser probability of success, the physician must take the parent’s choice.” ^[25]

The Judges categorically affirmed and warned that health science is not one hundred percent accurate to state which treatment will be perfect for the patient and which patient will survive or perish. They recommended that a patient’s wishes should be alternative treatment if there is risk associated with the standard treatment.

4. Inconclusive Decision on whether Parental Refusal amounts to a Crime.

Most times educated parents are already aware of the medical risks involved in the choice of blood transfusion and may reject it. Where a parent has refused a particular treatment plan and chooses another, this can never by any stretch of interpretation amount to attempt to commit crime or murder. For crime to be complete there must be *actus reus* and *mens rea*. A parent that takes a child to clinic does not intend to kill him but intends to save his life with the best medical treatment. Parental refusal differs from parental neglect. The 2nd appellant did not neglect the 1st appellant in the house to die. When the 1st respondent administered the antibiotics on the child on the first day and the 2nd appellant did not object to it.

Blood products are prescribed when the patient has lost so much blood in accident, after delivery, or during surgical

complications, blood is infused in a bid to save life, so it so difficult when it is heard that someone refuses a blood transfusion most people will feel anyone who reject blood product is digging a grave. Suicide is seeking to take one’s life. It is an attempt at self-destruction. Parents with religious belief do not have in mind self-destruction for themselves or for their children ^[26]. Though they refuse blood transfusions, they welcome alternative medical assistance. The American Surgeon correctly commented: “The rejection of a particular form of therapy of treatment does not translate to suicide. Parents with religious belief seek medical treatment of their children; they want best medical care without future repercussions” ^[27].

The 2nd appellant wanted the 1st appellant to live that was why she sought medical care at the earliest opportunity but she did not want to violate her deep-seated Bible-based religious convictions. Most people may reason that refusal of parent to accept blood product as treatment for their minors may lead to death and is a breach of minor’s right to health: A more logical approach will be to peruse what medical experts have said about using blood product as treatment. They said blood is ripe with complexities that even within blood types there exist some fifteen to nineteen known blood group systems ^[28]. When Rh blood group system is dissected, nearly 300 different Rh types may theoretically be recognized. And that even when the blood is screened, not all the impurities can be removed as such impurities may not immediately manifest.

Another unique feature of blood is the diverse antibodies it contains. A group of English criminologists in Zurich stated that each person antibody is unique and distinct. A blood of one person differs from another ^[29], Dr. Silver also corroborated that considering only those blood factors for which tests can be performed, and there is less than 1 in 100,000 chance of giving a person blood exactly like his own ^[30]. The textbook lists reactions to blood transfusion to include hemolytic, transmission of serum hepatitis, malaria, syphilis, infection, cardiac overload, citrate intoxication, potassium intoxication, abnormal bleeding, thrombophlebitis, and air embolism ^[31].

The researcher submits that considering the complications surrounding the use of blood transfusion as lifesaving treatment, the refusal of blood transfusion should not be considered as an attempt to commit murder or any other crime, but it will serve the interest of a child over long range of time.

5. Need for Court to make genuine findings before issuing exparte/emergency orders.

Interim means in the meantime or temporary. Interim order is made pending the hearing of the substantive suit on merit. It not granted for the asking but it is discretionary and there are condition precedents to be clearly expatiated before its grant. It has seven days life span. The work submits that in *Esabunor’s case* no facts were proven or investigated and the exparte order was not seven days but was final.

In a Nigerian case, conditions precedent for grant of interim order was extensively discussed ^[32]. An interim order made pursuant to a motion ex parte violates the rule of *audi alteram partem* which is an age-old settled principle of law that provides that the fundamental requisite of due process and procedural fairness should be observed. Fair hearing requires giving equal treatment, facilities, opportunity and consideration to all parties involved in a case ^[33]. In

Kotoye's case ^[34] the court held that an interim order should be granted sparingly; caution should be exercised. In the instant case it is submitted that the order the Magistrate made was not temporary but final and did not give the affected party right of reply.

6. Absence of Qualifications for Emergencies and the Parameters for State Intervention in Esabunor's case.

A life-threatening exigency is a critical wound or sickness that presents an instant crisis to a minor's life or long-term health, sometimes referred to as a health condition risking life or limb. Pediatric emergency extends to and includes severe allergic reactions, seizures, dehydration, severe infections, persistent fever, breathing difficulty, head or eye or nose injuries resulting from accident or serious falls, poisonings, overdose of drugs, severe complications of asthma, diabetes, sickle cell disease, animal bites and investigation of foreign bodies etc. The above cited illnesses may lead to respiratory distress, shock, seizure or altered consciousness. Infections are caused by viruses that invade human cells, take over the cell's machinery to reproduce ^[35]. As they grow in number, they can cause illness, some of them are life threatening.

What is the court or State required to do when a minor faces life threatening sickness? Should a court rush into making a decision relying on the opinion of one expert or relying on blood transfusion as the only remedy? From the in-depth discussion we have seen that there are many risks lurked with the use of blood product as treatment in emergency cases, the researcher is of the view that the questions posed by the renounced author Diekama should be analysed by the Doctors, State and Court hook, line and sinker before any decision is taken. I will reproduce again:

1. Will the child be in great danger because the parents refused to agree to blood transfusion as a treatment?
2. Does the danger that will accrue from parental refusal of State treatment be so grave demanding State/court to act?
3. Will the alternative treatment plan of the parent prevent the looming danger?
4. Is the choice of treatment by the State tested and proven and likely to save minor's life?
5. Will the choice of treatment by the State have more advantages over disadvantages if parent alternative treatment is allowed?
6. Is there any other treatment option available apart from blood transfusion that will be less meddlesome to parental autonomy?
7. Can the State/Court choice of treatment be used at all times for all other minors?
8. Will other guardians and parents agree that the state choice of treatment was fair?

It is to be noted that none of the questions were utilized in the decision of Esabunor's case. There was no time for the magistrate to make independent investigation before granting the ex parte order. The Police too did not make any investigation. Esabunor's case blows open areas that the Supreme Court will in future analyze in order to give children the best medical treatment devoid of future complications.

The Court had promptly acted to save the life of Esabunor first before any other consideration. The Court also acted to prevent crime from being committed as seen from the

judgment. But are there lessons that can be learnt from other jurisdictions that relate to giving parent's fair hearing?

Lessons from other Jurisdiction

1. There are lessons from the case laws of other jurisdictions that Nigerian courts can borrow a leaf from. Let us take Canadian jurisdiction as an instance. In an Alberta case ^[36], Baby M was born prematurely. He had health challenge and the Medical Director, Dr. McMillan, informed the parents that Baby M urgently required blood transfusion as the Baby had perforation in the bowel and there was risk the bowel contents may spill into abdomen which in turn could cause death by infection. Upon the parents' refusal, the doctor commenced a court proceeding that would lead to apprehension and treatment orders under Canadian Child Welfare Act. Relying on this application, the Court granted the order for blood product to be given to the baby for ten days. Baby M's parents took up the case to higher court challenging that Court order was given without fair hearing; The Higher Court after due investigation held that the Director of the clinic failed to disclose relevant information to the court which would have resulted in a different outcome. It condemned the attitude of lower court who failed to postpone proceedings to allow the parents to call medical expert who will furnish additional medical evidence contrary to the Director's opinion. The court caution against courts having the prejudiced mind or presuming that the doctor has always recommended the only acceptable treatment and that parents with religious belief are always wrong in denying their consent for treatment by way of blood products. That such paternalistic attitude impairs the parents' rights to choose medical treatment for their minors.
2. In the District Court of Florida ^[37] premature Twins' health was hanging in the balance. They had difficulty breathing and medically it was recommended that blood transfusion will enhance their longevity. On religious grounds, the parents withheld consent to the attending physician to administer blood transfusion. The court ruled that blood product be administered to the newborn and the Twins be placed under temporary care, custody and control of *guardian ad litem*. On appeal, the parents questioned right of trial court to order the transfusions. The expert doctor who testified admitted that the twins' condition was not immediately life threatening. The court reversed the trial court's order and gave back custody to the parents. What is captivating in this case is the opportunity given to the twins' parent to be heard and the Court's reliance on expert medical opinion. The ruling presents cogent procedural principles which Nigerian legal system should follow.
3. In *Cooper v Willey* ^[38] the parents of a minor child were reported to Department of Social Services for Child Maltreatment because they refused to consent to blood transfusion for their eight-month-old son at a time when he was ill with thrombocytopenia, a medical condition where there is acute shortage of blood. The child's blood count was at level 21 and falling. The danger point was at level 16. The parents had religious objections to blood transfusion. The social worker advised that the child could be taken to protective

- custody if hematocrit reached level 17. Since the child's blood count never fell to a point where blood transfusion was necessary, the court held that it cannot be said that the child's condition was impaired for lack of medical care or that the parents maltreated, abused or neglected the child. A lesson for Nigerian Court is that where the health condition of the minor has not deteriorated to the danger point, the need for State intervention has not arisen.
4. In the Italian case of *Paul Etomasango* ^[39], the parents of minor Richard were sued on the complaint that they did not fulfill their parental duty of care to a premature baby who had two episodes of staphylococcus infection followed by osteomyelitis treated with antibiotics: anemia, starting from when he was three weeks old, with hemoglobin gradually dropping. The medical directors recommended blood transfusion but the parents expressed their refusal to blood transfusion, however they asked for alternative treatment of erythropoietin. To overcome the parents' dissent the juvenile court was involved; once the court issued its order, the transfusion were carried out and the parents did not object any further. After thorough examination of the facts, the behaviour of the parents the court observed that the parents wanted their child to have the best medical treatment, they were cooperative and very concerned and their problem was only the religious belief they had when it came to blood transfusions. The court held that the parents' dissent was lawful and could not be considered a violation of their parental duty of assistance. A Lesson for our jurisdiction is to the effect that where parents' behavior toward the minor is loving, caring and lawful, the parents should be given ample opportunity to have access to their minors.
 5. In the case of *Re Eve* ^[40] the claimant brought action in court pleading for the court to authorize sterilization of her daughter (Eve) who was mentally retarded and suffered from a condition making it extremely difficult for her to communicate with others. The application for tubal ligation was denied and court held that its jurisdiction is to be exercised for the benefit of the person in need of protection and not for the benefit of others. The Lesson learnt is that before the Court orders for blood transfusion, it must analyze whether it will be for the immediate and future benefit of the minor.

Conclusion

1. The Case comment has examined the Supreme Court of Esabunor. It was discovered that the Court based its reasons for the decision on the need to preserve life and void the commission of crime. There was incomplete decision as to whether parental refusal of blood transfusion in behalf of their children amount to a crime. It is verified worldwide, that parents care about their children, understand their unique needs, desire what is best for them and this leads them to make beneficial decisions, knowing the make-up of their children than outsiders. To this end parents should raise children according to their spiritual beliefs and values. For a much stronger reason it is the parents' constitutional right to participate in making medical decisions in behalf of their minors as they are natural trustee of their

- children ^[41]. This right includes the natural obligation of the parents to decline or terminate treatments, even those that may be life-sustaining.
2. The condition precedent that must be considered by the Court or the State before they can take away minor from their parent is where a clear case of medical neglect have been made out, or where the parent had abandoned the child, abused the child, or persistently refused to provide necessities and medical care to the child. Where a parent recommends an alternative treatment or a second expert opinion; the parental opinion does not in any way whatsoever amount to neglect or attempt to commit a crime, the Court should take it into consideration in future cases. Eight conditions to be examined by the State and the Court before endorsing removal of minor from their natural family were proposed. It analyzed why the State should apply all the eight conditions recommended before intervention ^[42].
 3. The State was urged to be aware that where there is no proof that parents have neglected abandoned or abused their child it cannot wield its power to take over a child from its natural parents. State should only exercise power of takeover of the child where there is a real serious harm of life and not just perceived or imminent harm. Whenever there is real serious harm to the life of a child is proven the State should promote family-based alternative care rather that absolute takeover of the minor into the hands of people the minor is unfamiliar with. The State should not take over the Child when the parent is caring, loving and performing their responsibilities toward the child. Moreover, when the cause of State intervention is over the children should be returned to their parents.

The decision in Esabunor's case has had a tremendous impact on child's healthcare right but the author proposes that in future the court should strike a balance between caring and negligent parents.

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