

Judge J. Flaherty (1978). In The Court of Common Pleas of Allegheny County, Pennsylvania. Civil Division. McFall v Shimp. *The Truth Seeker*. 1989. May/June

Additional Commentary

OPINION: "The question posed by the Plaintiff, is that, in order to save the life of one of its members by the only means available, may society infringe upon ones absolute right to his "bodily security."..."For a law to compel the Defendant to submit to an intrusion of his body would change every concept and principle upon which our society is founded. To do so would defeat the sanctity of the individual and would impose a rule which would know no limits and one could not imagine where the line would be drawn"..."Forceable extraction of living body tissue causes revulsion to the judicial mind. Such would raise the spectre of the swastika and the Inquisition, reminiscent of the horrors this portends. "An Order will be entered denying the request for a preliminary injunction."

Perinatal and postnatal circumcision (forceable extraction of living tissue) of healthy newborns that benefits others "causes revulsion to the judicial mind". (jwp).

Compulsory Motherhood (abortion denied) is as onerous as compulsory abortion and both acts violate the 1st, 9th, 10th and 14th Amendments to the U.S. Constitution. Support the "Bodily Sovereignty" Amendment To The U.S. Constitution by Barbara Honegger (jwp).

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

CIVIL DIVISION

ROBERT McFALL,
Plaintiff,

v

DAVID SHIMP,
Defendant,

No. GD 78-17711

In Equity

(No Real Estate)

OPINION

FLAHERTY, J.

The Plaintiff, Robert McFall, suffers from a rare bone marrow disease and the prognosis for his survival is very dim, unless he receives a bone marrow transplant from a compatible donor. Finding a compatible donor is a very difficult task, and limited to a selection among close relatives. After a search and certain tests, it has been determined that only the Defendant is suitable as a donor. The Defendant refuses to submit to the necessary transplant and before the Court is a request for a preliminary injunction which would compel the Defendant, or seeks to compel the Defendant to submit to further tests, and eventually the bone marrow transplant.

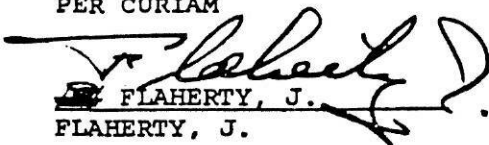
Although a diligent search has produced no authority, the Plaintiff cites the ancient statute of King Edward I, St. Westminster 2, 13 Ed. I, c. 24, pointing out, as is the case that this Court is a successor to the English courts of Chancery and derives power from this statute, almost 700 years old. The question posed by the Plaintiff is that, in order to save the life of one of its members by the only means available, may society infringe upon ones absolute right to his "bodily security."

The common law has consistently held to a rule which provides that one human being is under no legal compulsion to give aid or to take action to save that human being or to rescue. A great deal has been written regarding this rule which, on the surface appears to be revolting in a moral sense. Introspection, however, will demonstrate that the rule is founded upon the very essence of our free society. It is noteworthy that counsel for the Plaintiff has cited authority which has developed in other societies in support of the Plaintiff's request in this instance. Our society, contrary to many others, has as its first principle, the respect for the individual, and that society and government exist to protect the individual from being invaded and hurt by another. Many societies adopt a contrary view which has the individual existing to serve the society as a whole. In preserving such a society as we have it is bound to happen that great moral conflicts will arise and still appear harsh in a given instance. In this case the chancellor is being asked to force one member of society to undergo a medical procedure which would provide that part of that individual's body would be removed from him and given to another so that the other could live. Morally, this decision rests with the Defendant, and, in the view of the Court, the refusal of the Defendant is morally indefensible. For a law to **compel** the Defendant to submit to an intrusion of his body would change every concept and principle upon which our society is founded. To do so would defeat the sanctity of the individual and would impose a rule which would know no limits and one could not imagine where the line would be drawn.

This request is not to be compared with an action at law for damages, but rather is an action in equity before a Chancellor, which, in the ultimate, if granted, would require the forceable submission to the medical procedure. For a society, which respects the right of one individual, to sink its teeth into the jugular vein or neck of one of its members and suck from it sustenance for another member, is revolting to our hard-wrought concepts of jurisprudence. Forceable extraction of living body tissue causes revulsion to the judicial mind. Such would raise the spectre of the swastika and the Inquisition, reminiscent of the horrors this portends.

This court makes no comment on the law regarding the Plaintiff's rights in an action at law for damages, but has no alternative but to deny the requested equitable relief. An Order will be entered denying the request for a preliminary injunction.

PER CURIAM


FLAHERTY, J.
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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

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ROBERT McFALL,)
Plaintiff,)

v)

DAVID SHIMP,)
Defendant,)

No. GD 78-17711 In Equity)

(No Real Estate)

ORDER

AND NOW, to wit this 26th day of July, 1978 upon consideration of the request for a preliminary injunction, hearing thereon, arguments and briefs submitted, it is

ORDERED

ADJUDGED

and DECREED

that the request for a preliminary injunction is herewith denied.

PER CURIAM


FLAHERTY, J.
FLAHERTY, J.

**DO YOU KNOW THE TRUTH
— ABOUT THE LAW AND ABORTION
— IN DIFFERENT HUMAN CULTURES?**

1. **DO YOU KNOW** that the word "Person" in the 14th Amendment of the U.S. Constitution does not include the unborn?
2. **DO YOU KNOW** that ancient Greek and Roman Law; English Common Law and American Constitutional Law have never regarded the fetus as a person?
3. **DO YOU KNOW** that in most human societies, including Christian societies, that "Personhood" is conferred upon the infant through birth ceremonies, usually, naming ceremonies?
4. **DO YOU KNOW** that throughout human societies only "persons" are given burial ceremonies?
5. **DO YOU KNOW** that in Roman Catholic Hospitals today that fetuses under 500 grams are not baptized, named or given a burial ceremony — acknowledging that these fetuses are not persons?

Answers to these and other questions can be found in the book:
ABORTION RIGHTS AND FETAL 'PERSONHOOD'
published by AMERICANS FOR RELIGIOUS LIBERTY which can be
obtained by sending a check or money order for \$14.45 to:

**The National League For Separation of
Church And State**

P.O. Box 2832, San Diego, CA 92112

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The ACLU Averts Its Eyes

"In Washington, DC, Superior Court Judge Peter Wolf has decided to keep Brenda Vaughan behind bars until her child is born because he believes her fetus required protection from the mother's alleged 'addictive personality.' The judge says he will be 'darned if I'm going to have a baby born hooked on drugs.'"

Nat Hentoff:
The Village Voice