

E. v. Eve [1986] SCC

*Students: Herein I model the first five parts of case briefing and refer you to my lecture for a discussion of reasoning and significance. Point style is appropriate for your preparation for mootings (your homework) but your case analysis paper must be written in complete sentences.
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1. CITATION AND PARTIES

- a. The case name is **E. (Mrs.) v. Eve**
- b. The Appellant is **Eve**, by her Guardian ad litem, Milton B. Fitzpatrick (Litigation Guardian or legal representative)
- c. The Respondent is **Mrs. E** (her mother)
- d. The Court is **The Supreme Court of Canada**
- e. The Year is **1986**
- f. A list of 'interveners' – (organizations who were acknowledged by the Court to have an interest in the dispute, because they may be subject to the holding, and were granted the privilege to submit briefs on the issue to the Court) – included Canadian Mental Health Assoc, Consumer Advisory Comm of the Can. Assoc. for the MR, Public Trustee of Manitoba, Attorney General of Canada.

2. FACTS

- a. Eve is the **disabled adult daughter** of Mrs. E.
- b. Mrs. E wanted Eve **sterilized** because she had a boyfriend at a special school for DD adults.
- c. Mrs. E feared she would be **unable to care** for Eve's children.

3. PROCEDURAL HISTORY – THROUGH WHAT PROCESS WERE THE FACTS TRANSLATED INTO A LEGAL QUESTION?

- a. Mrs. E's initial applications to gain the legal power or court order for Eve's sterilization were **denied** by the courts in PEI, because it was a non-therapeutic procedure to which Eve was not able to consent.
- b. Mrs. E **appealed** the decision to a full hearing (*en banc* or all members) of the highest court in PEI and **won**.
- c. During step B, Eve was granted a **guardian ad litem** (a guardian to speak separately for Eve in litigation with her mother and guardian). This is a common procedure to give children and other dependents representation in law separate from parents and caregivers.
- d. The PEI high court made Mrs. E the "committee of the person of Eve," and supported her right and the courts authority to **agree to Eve's involuntary sterilization**.
- e. They added an order for a hysterectomy – presumably to eliminate menstruation.
- f. **Eve's guardian ad litem appealed to the SCC.**

4. THE LEGAL ISSUES OR QUESTIONS

- a. **Note:** The unanimous Court recognized 7 different legal questions that had been submitted by the parties, but these can be reduced to **three sets once you have digested the answers they gave**. Among these three sets, only the second and the third made important contributions to law.
- b. **Q1)**
 - i. Does the PEI Court possess a **statutory jurisdiction** to order the involuntary, non-therapeutic medical procedures for Eve?
 - ii. Note on reasoning: If Q1 is yes, the matter is resolved in favor of Mrs. E.; if no, Q2 is required.
- c. **Q2)**
 - i. Does the PEI Court's common law jurisdiction under *parens patriae* possess **the scope** to cover involuntary medical procedures?
 - ii. What is the **test** for the use of *parens patriae*?
 - iii. Note on reasoning: If Q2i is no, the matter is resolved in favour of Eve. If yes, the answer for Q2ii is necessary to answer Q3.
- d. **Q3)**
 - i. Can *parens patriae* be used for **non-therapeutic procedures**?
 - ii. In the absence of informed consent, can **sterilization be defined as therapeutic of beneficial**?
 - iii. Note on reasoning: Answering 'yes' to the Q3i favours Mrs. E, if this answer is 'no,' Mrs. E will need Q3ii to be 'yes' to prevail. If Q3i and Q3ii are both 'no,' Eve prevails.

5. THE HOLDING

- a. **A1: No.** PEI Courts were not granted statutory jurisdiction to grant the request for Eve's sterilization. This holding is only significant because it allows for the next two issues to have force.
- b. **A2i:** Yes. The scope of *parens patriae* jurisdiction is **unlimited**. **A2ii:** The test for *parens patriae* is the **best interest** of the person for whom the court is acting.
- c. **A3i: No.** *parens patriae* jurisdiction may have an unlimited scope, but not an unbridled application – it cannot be applied for non-therapeutic surgical procedures. **A3ii. No.** In the absence of informed consent, sterilization as contraceptive cannot be defined as therapeutic or beneficial.

6. NOTES ON REASONING

- a. The holding confirmed in Canadian law the **Best Interest test** for the application of *parens patriae* by the courts in cases when there is no statutory guidance. *Eve v E* reasoned that *parens patriae* could be justified in the 'best interest' of the dependent individual, **not in the interests of caregivers, guardians, or society**. Since this time the phrase "the best interest of the child," has been added to many statutes and regulations directing the actions of agencies and courts – further strengthening the principle.

- b. The proposition that sterilization cannot be in the best interests of persons who are unable to consent has been more controversial and was rejected in other common law countries such as the UK and Australia. Yet, the complexity of eugenic discourse makes the matter difficult to easily resolve and this holding remains law in Canada.
- 7. **JUDGMENT** – The SCC overturned the decision of the high Court of PEI and **the order for Eve’s sterilization was nullified.**
- 8. **SIGNIFICANCE** – See the note on reasoning above and watch or listen to my recorded lecture.