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In the Matter of Baby K: The Fourth Circuit Stretches EMTALA Even Further

In 1994, the Fourth Circuit Court of Appeals reaffirmed its position on the applicability of the Emergency Medical Treatment and Active Labor Act of 1986 (EMTALA)[1] when it decided *In re Baby "K"*.[2] Baby K, an anencephalic infant, was born in the hospital in October 1992.[3] Anencephaly is a congenital malformation found in a very small number of infants in which a major portion of the brain, skull, and scalp are missing.[4] One of the missing components of the brain is the cerebrum, which provides cognitive abilities and awareness and allows interaction with our surroundings.[5] Baby K, therefore, lacked all of these abilities, was permanently unconscious, and could not see, hear, or otherwise interact with her environment.[6] As a side effect of her anencephaly, Baby K had severe breathing problems at birth. Doctors at the hospital recommended that the infant be given only supportive care in the form of nutrition, hydration, and warmth and that a "Do Not Resuscitate Order" would be a possibility.[7] The mother, Ms. H, refused these suggestions and demanded mechanical respiration for the infant.[8] The hospital attempted to transfer the infant to other, more specialized hospitals, but none would accept her.[9] These breathing problems persisted and required Baby K's readmittance to the hospital on several occasions for further respirator treatment.[10] On the second of these subsequent readmittances, the hospital, joined by the father of Baby K, Mr. K, (collectively "the Hospital") filed this suit for declaratory judgment on whether it must continue to provide such treatment to

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1. 42 U.S.C. § 1395dd (1993).
2. 16 F.3d 590 (4th Cir.), *cert. denied*, 115 S. Ct. 91 (1994).
3. 16 F.3d at 592.
4. *Id.*
5. *Id.*
6. *Id.*
7. *Id.* at 593.
8. *Id.*
9. *Id.*
10. *Id.*

infants like Baby K.[11] The United States District Court for the Eastern District of Virginia ruled that in light of the Rehabilitation Act of 1973,[12] Americans with Disabilities Act,[13] Child Abuse Amendments of 1984,[14] EMTALA,[15] and Virginia Medical Malpractice Act,[16] the Hospital was not entitled to a declaratory judgment ratifying the discontinuance of such measures with Baby K.[17] The Hospital appealed, contending that the district court erred when it: 1) construed EMTALA to require a particular treatment rather than imposing a prohibition on disparate treatment; 2) ignored the standard of care provided to anencephalic infants as shown by the evidence; 3) failed to recognize that physicians under Virginia state law can refuse to administer treatment the physicians believe to be ethically and medically unwarranted; and 4) ignored relevant language by not applying EMTALA only to patients who, although unstable, are transferred by hospitals.[18] Finally, the Hospital had argued to the district court that further treatment of the anencephalic Baby K was "futile," and it should therefore not be required to continue to incur the expense of treatment which does not help the patient.[19] On appeal, the Fourth Circuit Court of Appeals found these arguments without merit and elected to follow the plain language of the statute.[20] The Court affirmed the decision of the district court, holding that EMTALA required the hospital to continue stabilizing respiratory treatment on Baby K when necessary.[21]

The legislative history of EMTALA demonstrates that it was originally enacted by Congress in 1986 to combat the problem of emergency medical treatment facilities "dumping" patients who could not afford the services.[22] However, the wording of the statute states that it applies

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11. *Id.*

12. Rehabilitation Act of 1973, § 504, 29 U.S.C. § 794 (1994).

13. Americans with Disabilities Act of 1990, §§ 3(2), 302, 42 U.S.C. §§ 12102(2), 12182 (1994).

14. Child Abuse Prevention and Treatment Act, § 2, *as amended*, 42 U.S.C. § 5101 (1994).

15. 42 U.S.C. § 1395dd (1993).

16. Virginia Medical Malpractice Act, VA. CODE ANN., § 8.01-581.1 (Michie 1950).

17. *In re* Baby "K", 832 F. Supp. at 1026-30.

18. *In re* Baby "K", 16 F.3d at 595.

19. *In re* Baby "K", 832 F. Supp. at 1027.

20. *In re* Baby "K", 16 F.3d at 598.

21. *Id.*

22. Mary Jean Fell, Comment, *The Emergency Medical Treatment and Active Labor Act of 1986: Providing Protection from Discrimination in Access to Emergency Medical Care*, 43 CATH. U. L. REV. 607, 610 (1994). The record is replete with Congress' belief that it was enacting EMTALA to help only those whose economic disadvantage might prevent them

to "any individual."[23] With the selection of the "any individual" language, Congress, maybe unwittingly, expanded the coverage of EMTALA to a much larger group than just those who are economically disadvantaged.[24] The problem faced by the courts is whether to apply the provisions of EMTALA according to Congress' original intentions, which only protected against economic dumping, or to interpret EMTALA as protecting all patients, regardless of situation, from discrimination in treatment.[25] The Fourth Circuit first addressed the provisions of EMTALA in *Baber v. Hospital Corp. of America*.[26] Baber brought the action against the doctors and hospital for their failure to provide his mentally ill sister with an appropriate medical screening and subsequent failure to provide her with stabilizing treatment, both required by EMTALA.[27] The district court granted summary judgment for the defendants, holding that although EMTALA did allow the institution of civil suits against federally-funded hospitals, it did not give rise to a private cause of action against treating physicians nor did it define the appropriate levels of medical screening for malpractice purposes.[28] The Court of Appeals for the Fourth Circuit affirmed the decision, finding that EMTALA was not intended to insure proper diagnosis of emergency situations, but only that screening and treatment procedures be given in a nondiscriminatory fashion.[29] The Fourth Circuit recognized the true breadth of EMTALA with its decision in

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from receiving proper treatment. The record reflects that EMTALA was to apply to all patients "regardless of financial status" and that patients are entitled to a certain level of care, "regardless of their ability to pay." S. Rep. No. 146, 99th Cong., 2d Sess. 468 (1986) and 1986 U.S.C.C.A.N at 42, 427, and 430.

23. 42 U.S.C. § 1396dd(a) (1993). Specifically, EMTALA provides that:

> In the case of a hospital that has a hospital emergency department, if *any individual* (whether or not eligible for benefits under this subchapter) comes to the emergency department and a request is made on the individual's behalf for examination or treatment for a medical condition, the hospital must provide for an appropriate medical screening examination within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition (within the meaning of subsection (e)(1) of this section) exists.

Id. (emphasis added).

24. Fell, *supra* note 22, at 610.

25. Thomas L. Stricker, Jr., Note, *The Emergency Medical Treatment and Active Labor Act: Denial of Emergency Medical Care Because of Improper Economic Motives*, 67 NOTRE DAME L. REV. 1121, 1122 (1992).

26. 977 F.2d 872 (4th Cir. 1992).

27. *Id.* at 874.

28. *Id.* at 877, 878.

29. *Id.* at 880.

Brooks v. Maryland General Hospital, Inc.[30] Brooks brought an action against the hospital under EMTALA based on his contention that delays in diagnosis and stabilization of his conditions caused permanent injury to his spinal column.[31] The Fourth Circuit held that EMTALA did not protect against misdiagnosis or malpractice in cases like *Brooks*.[32] However, the court continued in dictum to state that obligations of hospitals required by EMTALA were not just to the economically disadvantaged, but to "'any individual' who is presented to an emergency room for examination or treatment of a medical condition."[33] Yet, even before the Fourth Circuit's decision in *Brooks*, EMTALA had already been interpreted to apply to "any individual" in other jurisdictions.[34] Prior to the Fourth Circuit's decision in *Baby K*, the Sixth, Ninth, Tenth and District of Columbia Circuits had found that EMTALA, according to the statute itself, applied to any individual.[35] Other jurisdictions had also previously held that EMTALA guarantees only proper screening and stabilizing treatment and does not protect against misdiagnosis or malpractice.[36] Therefore, there was little dispute among the courts which had addressed the issue that EMTALA applied to any individual, regardless of socio-economic class, and the standards which the statute demanded.[37] Thus, the Fourth Circuit was burdened with deciding the scope it would give to the definition of "any individual."

In *Baby K*, the Fourth Circuit, disregarding the contrary legislative history,[38] affirmed the decision of the district court and found that EMTALA provided that hospitals covered under the act must provide the appropriate level of stabilizing treatment to any individual, regardless of the precipitating condition requiring such treatment.[39] With its decision in *Baby K*, the Fourth Circuit continued to follow its previous

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30. 996 F.2d 708 (4th Cir. 1993).

31. *Id.* at 709.

32. *Id.* at 711.

33. *Id.* at 711 n.4.

34. *See* Cleland v. Bronson Health Care Group, Inc., 917 F.2d 266 (6th Cir. 1990); Gatewood v. Washington Healthcare Corp., 933 F.2d 1037 (D.C. Cir. 1991); Brooker v. Desert Hosp. Corp., 947 F.2d 412 (9th Cir. 1991); and Delaney v. Cade, 986 F.2d 387 (10th Cir. 1993).

35. *See supra* note 33.

36. *See Cleland*, 917 F.2d at 266; *see also Gatewood* 933 F.2d at 1037.

37. *See Cleland*, 917 F.2d at 266; *Brooker*, 947 F.2d at 412; and *Delaney*, 986 F.2d at 387. Each of these courts found, from the plain language of the statute, that EMTALA must be applied to individuals. Also, in *Cleland* and *Brooker*, the courts determined that EMTALA imposed a minimum standard of care that must be given to all patients based on their emergency medical condition.

38. *See supra* notes 22-24 and accompanying text.

39. *In re* Baby "K", 16 F.3d at 598.

interpretations of EMTALA, which also relied upon the "plain meaning" of the words of the statute.[40] The court referenced and followed these interpretations directly from its prior decisions, *Baber v. Hospital Corp. of America* and *Brooks v. Maryland General Hospital, Inc.*[41] The court further justified its holding that EMTALA applied to any individual by referencing the holdings of other circuits which had held the same.[42] Finally, in the conclusion to its opinion, the court bolstered its application of EMTALA, even to an anecephalic infant, by relying on Congress' rejection of "a case-by-case approach to determining what emergency medical treatment hospitals and physicians must provide and to whom they must provide it."[43] The Fourth Circuit also set a new precedent under EMTALA with *Baby K* by ruling that a symptom of an underlying condition which is classified as an "emergency medical condition," requires stabilizing treatment, regardless of the standard of care normally accorded to treatment of the underlying condition.[44] In the only portion of its opinion that appeared to address the issue of morality, the court stated that "[i]t is beyond the limits of our judicial function to address the moral or ethical propriety of providing emergency stabilizing medical treatment to anencephalic infants."[45] Only Judge Sprouse, in his dissent, addressed the morality of the continuing treatment of Baby K imposed upon the hospital by the majority.[46]

The implications of *Baby K* are far-reaching and, if the Fourth Circuit's reasoning is adpoted by other circuits, could change the way courts ajudicate EMTALA cases. It is important to note that the Supreme Court has denied certiorari on the Hospital's appeal of the case.[47] Presumably, this can be attributed to the relative uniformity of decisions in EMTALA related cases which have been decided by the

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40. *See* Baber v. Hospital Corp. of Am., 977 F.2d 872, 880 (4th Cir. 1992); and Brooks v. Maryland Gen. Hosp., Inc., 996 F.2d 708, 711 n.4 (4th Cir. 1993).

41. *In re* Baby "K", 16 F.3d at 595-96. *See Baber*, 977 F.2d at 880; and *Brooks*, 996 at 711 n.4.

42. *In re* Baby "K", 16 F.3d at 593. The court specifically cited the decisions of Cleland v. Bronson Health Care Group, Inc., 917 F.2d 266; Gatewood v. Washington Healthcare Corp., 933 F.2d 1037; and Brooker v. Desert Hosp. Corp., 947 F.2d 412 to support its holding.

43. *In re* Baby "K", 16 F.3d at 598.

44. *Id.*

45. *Id.*

46. *Id.* at 599 (Sprouse, J., dissenting). Judge Sprouse stated: "Given this unique medical condition, whatever treatment appropriate for her unspeakably tragic illness should be regarded as a continuum, not as a series of discrete emergency medical conditions to be considered in isolation. Humanitarian concerns dictate appropriate care." *Id.*

47. 16 F.3d 590 (4th Cir.), *cert. denied*, 115 S. Ct. 91 (1994).

different circuits.[48] This uniformity has culminated in the intractible position of the Fourth Circuit's decision in *Baby K* on the method courts should use in determining the applicabilty of EMTALA to specific cases.[49] From the Fourth Circuit's opinion, it is clear that it has interpretated the language of EMTALA to allow for no exceptions, regardless of circumstances.[50] The importance of this interpretation may be seen in the court's extension of "individual" status under EMTALA to an anencephalic infant, which, by defintion, is not a sensient human being.[51] Indeed, the court's recognition of anencephalic infants as "individuals" within the meaning of EMTALA and granting their guardians the ability to require stabilizing treatment, is, without doubt, the most controversial topic of the court's opinion in *Baby K*.[52] In an attempt to justify its result, the Fourth Circuit compares anencephalic infants to "comatose patients, those with lung cancer, [and] those with muscular dystrophy—all of whom may repeatedly seek emergency stabilizing treatment for respiratory distress and also possess an underlying medical condition that severely affects their quality of life and ultimately may result in their death."[53] The latter two categories of patients (those with lung cancer and muscular dystrophy) cannot reasonably be grouped with nonsensient infants, no matter how much these two afflictions may degrade the quality of life of those who have them. People with lung cancer or muscular dystrophy have cognitive skills and perception, in spite of their conditions. Indeed, this very position was espoused by Judge Sprouse, Senior Circuit Judge on the Fourth Circuit Court of Appeals.[54] Judge Sprouse advocated that Baby K's underlying condition should be the focus of any EMTALA inquiry and any treatment of her condition should be considered to be continuing in nature, not discrete events that each required stablization.[55] This position is the correct one because inevitably, no matter how protracted and good the treatment may be, an infant with anencephaly will die.[56]

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48. *See* Cleland v. Bronson Health Care Group, Inc., 917 F.2d 266; Brooker v. Desert Hosp. Corp., 947 F.2d 412; Delaney v. Cade, 986 F.2d 387; and Gatewood v. Washington Healthcare Corp., 933 F.2d 1037.

49. *In re* Baby "K", 16 F.3d at 598.

50. *Id.*

51. *See supra* notes 4-7 and accompanying text which describes the condition of anencephaly and its impact on children born with the defect.

52. Elizabeth G. Patterson, *Human Rights and Human Life: An Uneven Fit*, 68 TUL. L. REV. 1527, 1555 (1994).

53. *In re* Baby "K", 16 F.3d at 598.

54. *Id.* at 599 (Sprouse, J., dissenting).

55. *Id.*

56. Janna C. Merrick, *Symposium: International Symposium on Critically Ill Newborns, Critically Ill Newborns and the Law*, 16 J. LEGAL MED. 189, 205-06 (1995).

Because of the final futility of recurrent and expensive treatment of anencephalic infants, many authors and area specialists have condemned the ruling of the Fourth Circuit in *Baby K*.[57] Although the district court addressed and discarded the Hospital's argument that further treatment of Baby K should not be required of the hospital because of the futility of such treatment, the Fourth Circuit's decision in *Baby K* completely neglected the issue of futility in treating conditions like anencephaly.[58] The Fourth Circuit refused to allow moral concerns to play a part in carving out exceptions to EMTALA, and in doing so, held that state laws allowing physicians to make life-and-death decisions based on medical and ethical concerns were pre-empted by EMTALA.[59] This finding of pre-emption in the area of ethical and moral decision-making limits will substantially affect the states' ability to regulate the dispensing of medical care within their borders. Of course, the broad, textual interpretation that the Fourth Circuit and the other circuits have given to the provisions of EMTALA does manage to serve the original legislative purpose of the measure, to prevent dumping, even if this goal is achieved through overinclusiveness.[60] It would appear that if Congress wishes to have EMTALA redirected to only apply to the economically disadvantaged, as was its original intent, it will be forced to enter the area again with reinforcing legislation. The Fourth Circuit's decision in *Baby K* firmly cements the federal court system's interpretation that EMTALA applies to all individuals, regardless of their sensience, condition, or economic position.

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57. *Id.* at 204-06; *see also* E. Haavi Morreim, *Futilitarianism, Exoticare, and Coerced Altruism: The ADA Meets Its Limits*, 25 SETON HALL L. REV. 883 (1995); and Mark A. Bonanno, *The Case of Baby K: Exploring the Concept of Medical Futility*, 4 ANNALS HEALTH L. 151 (1995).

58. *In re* Baby "K", 16 F.3d at 598.

59. *Id.* at 597.

60. *See supra* note 22 and accompanying text.