

Baxter v. Montana
--- P.3d ----, 2009 WL 5155363 (Mont. 2009)

***Baxter v. Montana*, decided by the Montana Supreme Court on December 31, 2009, addressed the question of whether the state's constitution guaranteed terminally ill patients a right to lethal prescription medication from their physicians.**

The Supreme Court ruled in favor of Baxter and the other pro aid-in-dying plaintiff's, although not on constitutional grounds.

Facts

The original lawsuit was brought by four Montana physicians, Compassion & Choices and Robert Baxter, a 76 year old truck driver from Billings, who was dying of lymphocytic leukemia. The plaintiffs asked the court to establish a constitutional right "to receive and provide aid in dying." The claim was based upon the following sections of Article II of the Montana Constitution:

Section 4. Individual dignity. The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.

Section 10. Right of privacy. The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

The state countered that "the Constitution confers no right to aid in ending one's life."

Trial Court Decision

The trial court judge ruled in favor of the plaintiffs on December 5, 2008. The trial court held a terminally ill, competent patient has a right to die with dignity under Article II, Sections 4 and 10 of the Montana Constitution and that right includes a right to physician aid in dying. It further held that the right protects physicians who aid such patients by prescribing a lethal drug for the patient. Baxter died that same day the trial court issued its decision without learning of the decision.

State Supreme Court

The Montana Attorney General appealed the case to the state supreme court. Oral arguments were heard on September 2, 2009. Amicus briefs filed in support of the right to receive/provide aid in dying include human rights groups, women's right groups, the American Medical Women's Association/American Medical Students Association, clergy, legal scholars, 31 Montana state legislators, and bioethicists, among others.

Among the groups filing amicus briefs on behalf of the state were the Alliance Defense Fund on behalf of the Family Research Council, the American Association of Pro-Life Obstetricians and

Gynecologists, and the Catholic Medical Association. The Montana Medical Association issued a statement opposing physician-assisted suicide, but it did not file an amicus brief.

Holding: The Supreme Court declined to decide the case on constitutional grounds because it was able to decide the case without reaching constitutional questions. The Court found that “we find no indication in Montana law that physician aid in dying provided to terminally ill, mentally competent adult patients is against public policy” and therefore, the physician who assists is shielded from criminal liability by the patient’s consent.

Reasoning

The Court examined state criminal law which provides that consent to a criminal act is a defense *unless* it is given by a person who is legally incompetent or unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged; or if it is induced by force, duress or deception; or if it is against public policy. Since only the last exception to consent could apply to these facts, the Court’s analysis probed whether physician aid in dying was against Montana public policy. After examining case law and legislation, including the state’s advance directive law, the Court found that state law and policy reflect respect for a patient’s end-of-life autonomy and a physician’s obligation to comply with a patient’s wishes. Therefore, the patient’s consent to the prescription of lethal drugs provided an adequate defense to the alleged crime of homicide under these circumstances in which a competent, terminally ill patient makes the decision whether or not to take the prescribed medication.

The state’s separate criminal provision against aiding or soliciting another to commit suicide does not apply in this case. By its own terms, that provision applies only if “such suicide does not occur...” The dissent argued that the legislature’s intent was that if the victim died, the case would be prosecuted as a homicide, but if the person lived, the case would be prosecuted as assisted suicide. The majority opinion would not go beyond the plain language of the statute.