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### Bridges v. Probate Court in and for the City and County of Denver

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KELLEY, J.

IN THE SUPREME COURT  
OF THE STATE OF COLORADO

No. 27663

APR 6 1977

DAMITA JO BRIDGES,	)	<u>ORIGINAL PROCEEDING</u>
	)	
Petitioner,	)	ERROR TO THE PROBATE COURT
	)	IN AND FOR THE CITY AND
vs.	)	COUNTY OF DENVER
	)	
THE PROBATE COURT IN	)	
AND FOR THE CITY AND	)	
COUNTY OF DENVER and	)	
ROGER D. BORLAND, a	)	
Routt County Judge	)	
assigned to said	)	
Court,	)	
	)	Honorable
	)	Roger D. Borland
Respondents.	)	Judge

PETITION FOR RELIEF IN THE NATURE  
OF PROHIBITION AND ORDER

COMES NOW Damita Jo Bridges (hereinafter "Petitioner") by her attorney, Robert W. Wheeler, and petitions this Honorable Court for a writ of prohibition permanently prohibiting and restraining Respondents from proceeding further in any respect in connection with Civil Action No. P-73503C in the Probate Court in and for the City and County of Denver (hereinafter "Probate Court") and for an order dissolving and setting aside that Order entered on March 21, 1977, not to be executed until the week of April 11, 1977, by Respondents which Order authorizes an abortion to be performed on Petitioner, without her consent, said abortion to be performed by the Colorado Psychiatric Hospital, University of Colorado Medical Center, Regents of the University of Colorado; and for a stay of execution of that Order during the pendency of this Original Proceeding; and as grounds for the Petition herein, Petitioner alleges as follows:

RECORDED

APR 3 1977

CLERK  
COLORADO SUPREME COURT

1. Damita Jo Bridges, a resident of the State of Colorado, was placed in Colorado Psychiatric Hospital, University of Colorado Medical Center, Denver, a facility designated by the Executive Director of the Department of Institutions, on December 31, 1976, for a seventy-two hour treatment and evaluation, pursuant to Colo. Rev. Stat. §27-10-105 (1973 as amended);

2. Immediately thereafter Petitioner was transferred to Bethesda Community Mental Health Center, Denver, Colorado, a facility designated by the Executive Director of the Department of Institutions;

3. On January 5, 1977, Petitioner was certified for short-term treatment by Bethesda Community Mental Health Center pursuant to Colo. Rev. Stat. §27-10-107 (1973 as amended);

4. Petitioner was certified as mentally ill and as a result of mental illness gravely disabled, pursuant to Colo. Rev. Stat. §27-10-105 (1973 as amended). A copy of said Certification is attached as Exhibit A to this Petition.

5. On or about January 6, 1977, Petitioner was transferred to Fort Logan Mental Health Center, a facility designated by the Executive Director of the Department of Institutions;

6. On January 12, 1977, Petitioner was transferred to the Neurology Service of the Colorado General Hospital, University of Colorado Medical Center;

7. Petitioner remains in the custody of the joint facilities of Colorado Psychiatric Hospital and Colorado General Hospital, University of Colorado Medical Center, pursuant to Colo. Rev. Stat. §27-10-101 (1973 as amended);

8. The Colorado General Hospital is under the control, management, and governance of the Board of Regents of the University of Colorado, pursuant to Colo. Rev. Stat. §23-21-102(1) (1973);

9. The University of Colorado Psychiatric Hospital is under the control, management, and governance of the Board of Regents of the University of Colorado, pursuant to Colo. Rev. Stat. §23-22-104 (1973);

10. Petitioner has never been placed under any legal disability or deprived of any legal right pursuant to Colo. Rev. Stat. §27-10-125 (1973 as amended);

11. No proceeding for court appointment of a guardian has been initiated pursuant to Colo. Rev. Stat. §15-14-303 (1973 as amended);

12. Petitioner retains all her legal and constitutional rights pursuant to Colo. Rev. Stat. §27-10-104 (1973 as amended);

13. Petitioner is pregnant with a fetus of approximately fourteen (14) weeks at the time of the Order of March 21, 1977;

14. Petitioner has not requested an abortion to be performed on her nor has she granted consent that such abortion be performed on her person;

15. On or about February 24, 1977, the Regents of the University of Colorado filed with the Probate Court a Motion for Order Authorizing Abortion. A copy of said Motion is attached as Exhibit B to this Petition;

16. On March 8, 1977, a hearing was held to the Court, Roger D. Borland, presiding, a Routt County Judge, assigned to the Probate Court;

17. Briefs from Counsel representing Petitioner Bridges and from Counsel representing the Regents of the University of Colorado were submitted to Judge Borland;

18. On March 21, 1977, Roger Borland, Judge assigned to the Probate Court, granted the Motion of the Regents of the University of Colorado, for and in behalf of the Colorado Psychiatric Hospital, authorizing an abortion to be performed on Petitioner Bridges. A copy of the Order of Judge Borland is

attached as Exhibit C to this Petition;

19. In entering its Order of March 21, 1977, the Probate Court proceeded without or in excess of its jurisdiction or in abuse of its discretion, contrary to the law as set forth in Colo. Rev. Stat. §27-10-101, et seq. (1973 as amended);

20. The matter and issue of jurisdiction has been presented to the Probate Court for its inquiry and consideration;

21. Petitioner's Motion for New Trial, pursuant to Rule 59, Colo. Rules of Civil Proc., has been denied. A copy of said denial of Motion is attached as Exhibit D to this Petition;

22. Petitioner is without other adequate remedy by appeal or any other remedy at law in view of the Order authorizing an abortion to be performed the week of April 11, 1977;

23. The issues herein presented are of unquestioned public and constitutional importance requiring immediate consideration to prevent grave and irreparable harm to Petitioner.

WHEREFORE, Petitioner Bridges respectfully prays that this Honorable Court issue its Writ of Prohibition permanently prohibiting and restraining Respondents from proceeding further in any respect in connection with Civil Action No. P-73503C, and Petitioner further prays that this Court enter an immediate order dissolving and setting aside the Order entered by the Probate Court on March 21, 1973, in Civil Action No. P-73503C, and for a stay of execution of that Order during the pendency of this Original Proceeding.

Respectfully submitted,

---

ROBERT WHEELER, #7828  
Attorney for Petitioner  
Legal Aid Society  
912 Broadway  
Denver, Colorado 80203  
Telephone: 837-1313

---

DORIS E. BURD, #6699  
Of Counsel  
250 West 14th Avenue  
Denver, Colorado 80202  
Telephone: 753-3193

DATED: April 5, 1977

CERTIFICATE OF MAILING

I hereby certify that I have sent a true and correct copy of the foregoing Error To The Probate Court In and For The City and County of Denver, by depositing the same in the United States Mail, postage prepaid on the 5th day of April, 1977, properly addressed to:

George D. Dikeou  
Assistant Attorney General  
Associate University Counsel  
University of Colorado  
Medical Center  
4200 East Ninth Avenue  
Denver, Colorado 80206

The Honorable Roger D. Borland  
Acting Probate Judge  
Routt County Court  
P.O. Box K  
Steamboat Springs, Colorado  
80477

Charles J. Onofrio  
Guardian Ad Litem  
271 South Downing Street  
Denver, Colorado 80209

R. Paul Horan  
Guardian Ad Litem  
Symes Building  
Denver, Colorado 80202

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Court Number

P-13503C

IN THE INTEREST OF

Darnita Jo Bridges  
(Name)

Respondent

NOTICE OF CERTIFICATION  
AND  
CERTIFICATION FOR SHORT-TERM TREATMENT  
(27-10-107, C.R.S. 1973)

Date:

1/5/77

The respondent is hereby notified that the following action has been taken pursuant to Section 27-10-107, C.R.S. 1973, as amended.

The respondent has been \*detained for seventy-two hour evaluation under the provisions of Section 27-10-105, C.R.S. 1973, as amended.\* ~~\*evaluated under court order pursuant to Section 27-10-106, C.R.S. 1973, as amended.\*~~

The respondent's condition has been analyzed and he has been found to be mentally ill, and, as a result of mental illness, ~~\*a danger to others or to himself.\*~~ \*gravely disabled.\*

~~\*The respondent has been advised of the availability of, but has not accepted, voluntary treatment.\*~~ \*The respondent has accepted voluntary treatment; however, reasonable grounds exist to believe (s)he will not remain in a voluntary program.\*

Attached hereto is a statement from David R. Shanks, M.D., who is on the staff of Bethesda Hospital & CHHC (facility), setting forth the findings for short-term treatment under certification.

As a result of the finding for short-term treatment under certification the respondent is hereby certified to Bethesda Hospital & CHHC (facility) for short-term treatment as of the date first above written and for a period not to exceed three months.

David R. Shanks, M.D.  
Professional Person

4400 E. 8th Ave. 758-1514  
Denver, CO 80220  
Address and Telephone Number

## NOTICE TO RESPONDENT

You are advised that the law gives you a right to a hearing upon your certification for short-term treatment before a court or jury. In addition to the right of review of this certification you have the right of review by the court, of your treatment or that your treatment be on an out-patient basis. If you wish to take advantage of any of these rights, you should direct a written request to the Probate Court of Denver County, specifying the type of hearing. You may make this request any time that this certification for short-term treatment is in effect.

\*Strike between asterisks if inapplicable.

Form M-8 (8/75)

RECEIVED

JAN 6 - 1977  
CITY ATTORNEY'S  
OFFICE  
MENTAL HEALTH  
DIVISION

IN THE PROBATE COURT

IN AND FOR THE CITY AND COUNTY OF DENVER

STATE OF COLORADO

No. P-73503-C

IN THE MATTER OF       )  
                              )  
DAMITA JO BRIDGES       )

MOTION FOR ORDER  
AUTHORIZING ABORTION

COMES NOW the Regents of the University of Colorado, for and on behalf of Colorado Psychiatric Hospital and Colorado General Hospital, and move this Honorable Court for its Order authorizing an abortion for and on behalf of Damita Jo Bridges and as grounds therefor states and alleges as follows:

1. The Regents of the University of Colorado are charged by statute with the management and control of Colorado Psychiatric Hospital. 1973 C.R.S. 23-22-104.

2. Damita Jo Bridges was placed under 72 hour treatment and evaluation at Colorado Psychiatric Hospital on December 31, 1976, pursuant to 1973 C.R.S. 27-10-105. Thereafter, she was immediately transferred to Bethesda Community Mental Health Center.

3. On January 5, 1977, Short-Term Certification was obtained on Damita Jo Bridges by Bethesda pursuant to 1973 C.R.S. 27-10-107, and she was transferred to Fort Logan Mental Health Center.

4. On January 12, 1977, Damita Jo Bridges was transferred by Fort Logan to the Neurology Service of Colorado General Hospital which is also under the control and management of the Regents of the University of Colorado. 1973 C.R.S. 23-21-102.

5. Damita Jo Bridges is and continues to be a patient of the joint facilities of Colorado Psychiatric Hospital and



Colorado General Hospital and is in the custody of such facilities pursuant to the above cited provisions of 1973 C.R.S. 27-10-101, et seq.

6. Damita Jo Bridges was born on September 25, 1952, and is now 24 years of age.

7. Damita Jo Bridges has been diagnosed by the staff of Colorado Psychiatric Hospital as having a mental condition of psychosis secondary to organic brain syndrome, cause unknown.

8. During the course of diagnosis and treatment, Damita Jo Bridges was subjected to certain x-ray procedures.

9. It has recently been determined that Damita Jo Bridges is pregnant with a fetus of approximately 11 weeks of age at the time of filing of these pleadings.

10. Because the psychosis is organically caused, the doctors at Colorado Psychiatric Hospital feel there is a risk of organic damage to the fetus. Because of psychosis secondary to organic damage and its severity, it is very unlikely Damita Jo Bridges will be able to care for infant. General prognosis for recovery is poor.

11. In addition, x-rays taken of the patient prior to the determination of pregnancy have further increased the risk of damage to the fetus.

12. Because of her psychosis, Damita Jo Bridges is unable to give proper and adequate consent to such an abortion and no guardian has been appointed to represent her interests.

13. The parents of Damita Jo Bridges, the legal aid attorney who has been appointed by this Court to represent the interests of Damita Jo Bridges, and the Regents of the University of Colorado, together with the professional staff of the Colorado Psychiatric Hospital and Colorado General Hospital, are of the opinion that Damita Jo Bridges does not have the capacity to consent to an abortion.

14. An abortion would be in the best medical interest of Damita Jo Bridges and the fetus.

WHEREFORE, it is respectfully prayed that this Honorable Court enter its Order authorizing the Regents of the University of Colorado and their professional staff at Colorado General Hospital and Colorado Psychiatric Hospital to perform an abortion on Damita Jo Bridges.

Respectfully submitted,

J. D. MacFARLANE  
Attorney General



GEORGE D. DIGrego, No. 4392  
Assistant Attorney General  
Associate University Counsel  
University of Colorado Medical Center  
4200 East Ninth Avenue  
Denver, Colorado 80262  
Telephone: 394-7458

CERTIFICATE OF MAILING

I hereby certify that I mailed a copy of the within Motion for Order Authorizing Abortion in the U.S. Mails, postage prepaid, to Mr. Joe Bilett, Student Attorney, Mental Health Law Project, Legal Aid Society of Metropolitan Denver, Inc., 912 Broadway, Denver, Colorado 80203 this 24th day of February, 1977.



IN THE PROBATE COURT

IN AND FOR THE CITY AND COUNTY OF DENVER

STATE OF COLORADO

No. P-73503-C

IN THE MATTER OF

)

)

DAMITA JO BRIDGES

)

O R D E R

THIS MATTER came on for hearing to the Court March 8th, 1977, on the Motion of the Regents of the University of Colorado for an Order Authorizing Abortion. Respondent Damita Jo Bridges was present with her Court-appointed attorney. The Court has heard testimony and considered the arguments of counsel in this case. Because of the grave nature of the procedures sought to be authorized, this Court has ordered briefs from counsel, and has, on its own Motion, appointed attorneys to represent the fetus. The Court has considered the briefs of all counsel, and the cases and statutes cited, and enters Findings and Judgment as follows:

FINDINGS OF FACT

1. Damita Jo Bridges was placed under 72 hour treatment and evaluation at Colorado Psychiatric Hospital on December 31, 1976, pursuant to 1973 C.R.S. 27-10-105. Thereafter, she was immediately transferred to Bethesda Community Mental Health Center.
2. On January 5, 1977, Short-term Certification was obtained on Damita Jo Bridges by Bethesda pursuant to 1973 C.R.S. 27-10-107, and she was transferred to Fort Logan Mental Health Center.
3. On January 12, 1977, Damita Jo Bridges was transferred by Fort Logan to the Neurology Service of Colorado General Hospital

which is also under the control and management of the Regents of the University of Colorado. 1973 C.R.S. 23-21-102.

4. Damita Jo Bridges is and continues to be a patient of the joint facilities of Colorado Psychiatric Hospital and Colorado General Hospital and is in the custody of such facilities pursuant to the above cited provisions of 1973 C.R.S. 27-10-101.

5. Damita Jo Bridges is was born on September 25, 1952, and is now 24 years of age.

6. Damita Jo Bridges has been diagnosed by the staff of Colorado Psychiatric Hospital as having a mental condition of psychosis secondary to organic brain syndrome, cause unknown.

7. During the course of diagnosis and treatment, Damita Jo Bridges was subjected to certain x-ray procedures.

8. It has recently been determined that Damita Joe Bridges is pregnant with a fetus of approximately 12 weeks of age at the time of the hearing.

9. Damita Jo Bridges is gravely disabled and because of her psychosis is unable to understand the nature of the medical procedure sought to be performed, and does not have the capacity to consent to an abortion. No guardian has been appointed to represent her interests, although she is represented by counsel appointed by the Court.

10. There has been no significant evidence produced to establish that any prior medical testing, or organic condition in the mother, has caused damage to the fetus.

11. Because of the need for further diagnostic testing involving the use of x-rays and introduction of chemicals into the mother's body, the presence of the fetus represents an obstacle

to successful diagnostic methods. Because of the presence of the fetus, certain chemical therapies are unavailable to Damita Jo, and her treatment program has been inhibited. An abortion would be in the best medical interest of Damita Jo Bridges. Each day of delay in diagnosis and treatment of Damita Jo increases the probability of her condition becoming permanent, and diminishes her chances for recovery.

#### CONCLUSIONS OF LAW

The Order requested in this case raises questions fraught with serious moral, legal, medical and emotional implications. The Court has been aided in this decision by very able briefs of counsel. The primary question to be considered in this case involves jurisdiction.

Article VI, Sec. 9 (3) of the Colorado Constitution grants this Court exclusive original jurisdiction in all matters regarding the adjudication of the mentally ill. The Respondent is before this Court by virtue of proceedings under Short-Term Certification in 1973 C.R.S. 27-10-107, and is in the custody of Colorado Psychiatric Hospital and Colorado General Hospital. She has been served with process in this matter, and there is no question that she is personally under this Court's jurisdiction. However, does this Court have the authority, by statute or case rule, to enter the Order requested? This Court concludes that it does have such authority. The Attorney General argues that the general purpose declared in 1973 C.R.S. 27-10-101 (a), combined with regulations adopted by the Department of Institutions pursuant to 1973 C.R.S. 27-10-116 (2) (a), are sufficient grounds for the judicial action prayed for in this case. The Court is convinced that these reasons alone will

not suffice, but that the inherant authority of the Court in such matters does provide this Court with broad powers to enter the Order requested.

This case presents an issue of first impression in Colorado. The Court is persuaded that the reasoning in Strunk vs. Strunk, (Ky) 445 S.W. 2nd 145, 35ALR3d 683 ought to be adopted in this case. Damita Jo Bridges is not capable of providing the consent necessary to authorize the medical treatment her doctors have concluded is needed. She is not a minor, no guardian has been appointed to act in her behalf, time is running short and it has fallen on this Court to be the forum of last resort to obtain the consent, or refusal to consent, sought by her custodians. The Court must conclude that it has inherent common law powers to provide substituted judgment in matters touching on the well-being of the Respondent. When these powers are invoked, the Court must act. The question then is: Should consent to an abortion be given?

This Court may strongly differ with the philosophy of Roe v. Wade, 410 U.S. 139, and Doe v. Bolton, 410 U.S. 205, but it is bound by the mandate of those decisions. As Mr. Chief Justice Pringle stated in People v. Norton, 181 Colo. 47, we are required to obey the result which those two cases command. The Findings made on the facts of this case all indicate an abortion would be in the best medical interests of Respondent, although there is no present threat to the life of the Respondent. The Court must weigh the health requirements of Respondent and, under Wade and Bolton, cannot look to the interests of a non-viable fetus in considering what decision to make.

The Court is well aware of the Constitutional questions involving rights to privacy which are raised in this case. This is not a controversy in which compelling state interests are weighed against the right to be free from invasion of fundamental personal privacy. The tests supplied in such cases as Griswold v. Connecticut, 381 U.S. at 485, are not helpful here. The dilemma facing this Court is similar to that which confronted the courts most recently in Re Quinlan, 355 A2d 647. This Court has read that decision and finds that it is persuasive as to the judgment requested here. The guardians of Karen Ann Quinlan had petitioned, in the name of her personal rights to privacy, to allow them to act in her behalf to withdraw medical life-support systems. The Appeals Court allowed this drastic action on the basis of the Constitutional right to privacy, not in apposition to that right.

If this Court must act to authorize the surgical procedure here requested, it must do so in furtherance of the right to privacy guaranteed Damita Jo Bridges, and not in derogation of those rights.

The action this Court feels compelled to take in this case is taken reluctantly, and only by following the precedent of the Wade, Bolton, Quinlan and Strunk decisions. The Order of this Court is based on a finding that the best interests of Damita Jo Bridges are served thereby. It is therefore,

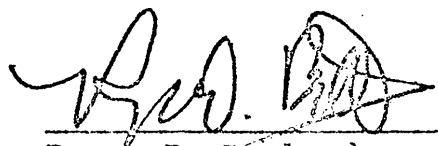
ORDERED that the Motion of the Regents of the University of Colorado, for and on behalf of Colorado Psychiatric Hospital, is hereby GRANTED.

The Court directs that the therapeutic abortion authorized

herein shall not be performed until the week of April 11, 1977, so that an appeal from this Order may promptly be taken. The abortion authorized in this case must be performed before the end of the second trimester and preferably by the 18th week of pregnancy, which the Court computes to be approximately April 12, 1977. It is,

FURTHER ORDERED that a stay of execution is granted in this case until April 11, 1977, and oral argument on Motion for New Trial is dispensed with.

Dated this 21st day of March, 1977.

  
\_\_\_\_\_  
Roger D. Borland  
Acting Probate Judge



## EXHIBIT D

IN THE PROBATE COURT  
IN AND FOR THE CITY AND COUNTY OF DENVER  
STATE OF COLORADO

Civil Action No. P-73503C

In the Matter of )  
 )  
DAMITA JO BRIDGES, ) O R D E R  
 )  
Respondent. )

THIS MATTER has come on for consideration of Respondent's Motion for New Trial, submitted with briefs, and oral argument dispensed with. The Court has considered the brief of Respondent and argument made, and now being fully advised in the premises, it is

ORDERED that the Motion is DENIED. The Court believes that implicit in the Findings entered in its Judgment, is recognition that the Respondent would have made the request for the abortion ordered, if she were fully able to recognize such need in her own best interests.

Dated this 4th day of April, 1977.

Roger D. Borland  
Acting Probate Judge