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# Court strikes decision for mentally ill woman's abortion

## Backs rights those ruled incompetent

By **Peter Schworm** | GLOBE STAFF    JANUARY 17, 2012

Earlier this month, a Norfolk probate judge declared a pregnant woman with schizophrenia incompetent and ordered her to undergo an abortion, stating she could be “coaxed, bribed, or even enticed” into the hospital for the procedure.

Unbidden, the judge further directed that the 32-year-old woman be sterilized “to avoid this painful situation from recurring in the future.”

Yesterday, the state's appeals court struck down the decision in unusually harsh terms, saying the woman had clearly expressed her opposition to abortion as a Catholic.

“The personal decision whether to bear or beget a child is a right so fundamental that it must be extended to all persons, including those who are incompetent,” the opinion stated, citing a 1982 ruling by the state's Supreme Judicial Court.

In sharp words, yesterday's decision also denounced the sterilization order, a directive that several legal specialists said they had not heard of in recent memory.

“No party requested this measure, none of the attendant procedural requirements has been met, and the judge appears to have simply produced the requirement out of thin air,” wrote Appeals Court Judge Andrew Grainger.

The case provides a rare window into the wrenching ethical issues involved in treating pregnant women with chronic mental illness and the delicate balance between respecting their autonomy and protecting their best interests and those of an unborn child.

Specialists said the Norfolk judge, identified in the decision as Christina Harms, overstepped her bounds, and praised the higher court's swift and unsparing reversal.

"It's a case that stands out for protecting the rights of the mentally ill," said Frank Smith, chairman of the Massachusetts Bar Association's Individual Rights & Responsibilities Section. "The record seems clear that she did not want to have an abortion."

Douglas Boyer, the woman's court-appointed lawyer, said the appeals court "acted appropriately" to make sure his client's wishes are heeded.

The case, which Boyer called the most agonizing of his career, will return to family court, he said. The woman is up to five months pregnant.

The woman, identified in court records by the pseudonym Mary Moe, described herself to court officials as "very Catholic," and said she would never have an abortion. When asked about an abortion at a December hearing, she replied that she "wouldn't do that."

At the same time, she denied to court officials that she is pregnant and has refused obstetrical care and testing. She became "agitated and emotional" when discussing a previous abortion that came to light, the opinion stated.

As a result, Harms ruled that the woman was not competent to make a decision about an abortion, citing "substantial delusional beliefs," and concluded she would choose to abort her pregnancy if she were competent.

The woman would "not choose to be delusional" if competent, Harms ruled, and would choose to have an abortion "in order to benefit from medication that otherwise could not be administered due to its effect on the fetus."

She ordered that the woman's parents be appointed coguardians to give their consent to the abortion and sterilization. The parents, who have custody of the woman's son, believe that terminating the pregnancy is in their daughters' best interests, according to court records.

But the appeals court concluded that Harms improperly decided the matter of the woman's competence, and noted that a court-appointed specialist had determined that the woman would "decide against an abortion if she were competent." Without conducting a hearing, Harms found the specialist's report inconclusive.

Legal specialists said courts must base such decisions on what they believe the woman would decide if she were competent.

"The judge is not supposed to determine what is in the person's best interests or in her child's," said Frank Laski, executive director of the Mental Health Legal Advisors Committee in Boston. "The judge has to determine what she would do if she were competent."

Laski called the initial decision extreme, and other specialists said they believed it was an anomaly.

Daniel Pollack, a professor at Yeshiva University who has studied the issue of consent in such cases, said it is not clear how often such orders are issued.

"My guess is it happens a lot more than we know," he said.

Still, courts are far more likely today to recognize the autonomy of the mentally ill than in the past, he said.

Because of the sensitive nature of the case, previous court records, including Harms's decision, have been sealed. Harms, who a court official said retired earlier this month, could not be reached for comment yesterday.

The plight of the woman became a legal matter in October, when she appeared at a hospital emergency room and was found to be pregnant. Doctors concluded that taking her off the medication would be risky for her.

The state Department of Mental Health then filed a petition to have the woman's parents named as guardians so they could give consent for an abortion.

The woman mistakenly maintained she had given birth to a baby girl, Nancy, and wrongly said she had met the judge before.

The woman, who also has bipolar disorder, has been pregnant twice before. In the first pregnancy, she had an abortion. In the second she gave birth to the boy.

At some point between her abortion and the birth of her son, she had a "psychotic break" and has since been hospitalized numerous times for mental illness, court records say.

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*Peter Schworm can be reached at [schworm@globe.com](mailto:schworm@globe.com). Follow him on Twitter [@globepete](https://twitter.com/globepete).*

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