

at law

Justification by Faith

by Carl E. Schneider

In June 1997 a sixteen-year-old girl named Shannon Nixon began to feel ill. Her parents belonged to the Faith Tabernacle Church, one of a number of American sects which believe that illness should be treated spiritually rather than medically. Accordingly, the Nixons prayed for Shannon and took her to be anointed at their church. Shannon reported that she felt better and that the spiritual treatment had gained her her victory—her recovery.

Before long, however, Shannon again felt ill. She became weaker and weaker and then fell into a coma. A few hours later she died. An autopsy revealed that she had succumbed to diabetic acidosis. Shannon's parents were charged with involuntary manslaughter and endangering the welfare of a child. A jury found them guilty, and the judge sentenced them to prison for two and half to five years and fined them \$1,000.¹

The Nixons' case merits attention not because it sets an astonishing new precedent, but because in its ordinariness it represents several continuing developments in a problem with which the law has had a prolonged and perturbed history. It is standard doctrine that parents have a duty to provide their children the medical care they need. Parents who breach this duty may ordinarily be judged to have "abused or neglected" their child, they may be subject to criminal penalties, and the state may step in to protect the child, even to the extent of terminating the parents' legal relationship with the child. States have long intervened to secure medical care for children who are seriously ill but whose parents refuse to provide them medical care, even if the parents are motivated by their religious beliefs.

The first amendment to the Constitution, of course, protects the "free exercise" of religion. Doesn't this mean that parents who deny their children medical care for religious reasons can prevent the state from overriding their decision to be more concerned for their children's immortal souls than for their children's temporal bodies? The conventional answer to that question is no, not least because of the Supreme Court's decision in *Prince v. Massachusetts*.² In an often-quoted passage, it said, "Parents may be free to become martyrs themselves. But it does not follow they are free, in identical circumstances, to make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves."

Suppose, however, that—as easily happens—the state does not find out that a child is being denied treatment until the child has died. The usual rule here is that if a child dies because the parents have withheld medical care, the parents may be held criminally liable for the death.

Nevertheless, where parents have refused medical treatment for their children for religious reasons, the concerns that animate the first amendment might lead us not to invoke the criminal law against them. Furthermore, prosecutions of these parents is notoriously difficult. The parents' failure to provide medical care must be identified as the cause of death, a prosecutor must decide to prosecute, a jury must decide to convict, a judge must decide to sentence, and an appellate court must decline to use any of the numerous devices at its disposal to reverse the conviction. It is thus not so surprising that for many

years there were no reported appellate court opinions upholding homicide convictions of parents whose children had died because they had been given spiritual rather than medical care (although some parents were convicted of charges less than homicide).

In recent years, however, this tacit compromise has been disturbed by two conflicting developments. On one hand, most states have adopted statutes that exempt religiously motivated parents from some of the effects of child protection laws. On the other hand, the number of homicide prosecutions of parents whose children have died after their parents treated them spiritually appears to have increased, and opinions upholding homicide convictions in these situations have begun to appear.

Nixon illustrates why these two trends seem to conflict and why the new statutory exemptions raise problems for homicide prosecutions. To understand the case, we need to look carefully at the Pennsylvania exemption at issue. The commonwealth's Child Protective Services Act (the CPSA) provides that if a county child protection agency

determines that a child has not been provided needed medical or surgical care because of seriously held religious beliefs of the child's parents, . . . which beliefs are consistent with those of a bona fide religion, the child shall not be deemed to be physically or mentally abused. The county agency shall closely monitor the child and shall seek court-ordered medical intervention when the lack of medical or surgical care threatens the child's life or long-term health. In cases involving religious circumstances, all correspondence with a subject of the report and the records of the Department of Public Welfare and the county agency shall not reference "child abuse" and shall acknowledge the religious basis for the child's condition, and the family shall be referred to general protective services, if appropriate.³

The Nixons argued that their due process rights had been violated because this statute created such doubt about parents' duty to provide medical care that the Nixons did not have enough notice that treating Shannon spiritually might subject them to liability under the state's manslaughter statute. The Nixons had a point. If a child denied medical care for religious reasons was not to be "deemed to be physically or mentally abused," might the Nixons not reasonably conclude that they had no duty to provide medical care? And if they had no duty to provide medical care, how could a failure to provide it make them liable for manslaughter? At least two state supreme courts have found that the particular language of their state's exemption did make homicide convictions improper.

Nevertheless, the *Nixon* court, like courts in at least two other states, concluded that the exemption did not create a notice problem. The court's opinion is neither thorough nor lucid, but it may be read as arguing along these lines: The CPSA and the manslaughter statute do not conflict. Parents have a duty "to procure medical treatment of their children." If their children die because they have breached that duty, they may be guilty of involuntary manslaughter. Nothing in the CPSA changes that.

Pennsylvania law, the court observed, provides that a person "is guilty of involuntary manslaughter when as a direct result of . . . the doing of a lawful act in a reckless or grossly negligent manner, he causes the death of another person." The court reasoned that

an act which does not qualify as child abuse may still be done in a manner which causes death and thus qualifies as involuntary manslaughter. . . . While the Nixons were not considered child abusers for treating their children through spiritual healing, when their otherwise lawful course of conduct led to a child's death, they were guilty of involuntary manslaughter.

The court intimated that the case might have been different if the CPSA

had said that spiritual healing was "an accepted treatment for illness in children, raising it to the same level as conventional medical treatment." But, the court said, the CPSA "merely exempts parents who treat their children in this manner from characterization as child abusers." Finally, the court was fortified in its conclusion by the fact that the CPSA clearly contemplated that the state should intervene to secure medical care for seriously ill children whose parents opposed medical treatment for religious reasons. In effect, the court said that when the legislature enacted the exemption it did not intend to alter its manslaughter statute and that that should have been evident to the Nixons. And while it is hard to know just what regulatory regime the court envisaged, it may have contemplated a new kind of compromise in which parents may treat their ill children spiritually without fear of criminal liability, but only insofar as such treatment does not pose extreme risks to the child's life or health.

The court's legal analysis seems plausible but not inevitable. Certainly the court was not grasping at ways of reversing the parents' manslaughter convictions, suggesting that this court was less impressed than its competitors with the argument against such prosecutions. That argument contends that while requiring medical care for ill children may be desirable, prosecuting parents who have given their children spiritual treatment is not. After the child has died, it is too late to prevent the parents from "mak[ing] martyrs of their children." Furthermore, the usual justifications for punishment—retribution, general deterrence, and specific deterrence—may seem to fit these situations poorly.

Retribution for parents whose deepest religious convictions lead them to care for their children in their own way and who are already suffering from the death of their child seems neither appropriate nor necessary. General deterrence is notoriously ineffective where parents believe they must obey a higher authority than secular law. As to specific deterrence, if a parent is undeterred by the death of a child, why should the risk of prosecution make any difference?

Two features of *Nixon* may have helped reinforce the court's view of these prosecutions. First, Shannon's illness was not one for which treatment was controversial or highly uncertain. This is typical. The most recent survey of these cases suggests that "death and/or suffering were preventable in virtually all of these children. These fatalities were not from esoteric entities but ordinary ailments seen and treated routinely in community medical centers."⁴

This leads us to the second aspect of *Nixon* that may have sustained the court in its narrow reading of the exemption. The Nixons had claimed that their sentence exceeded the sentencing guidelines. The appellate court upheld the sentence because in 1991 the Nixon's nine-year-old son had died "from complications arising from an ear infection." The Nixons had been charged with involuntary manslaughter and endangering the welfare of a child. They pled no contest and received two years' probation. The appellate court held that the Nixons' sentence in Shannon's case was "well-justified" by "the possibility of a recurrence of these criminal events" (and the court might well have thought this earlier conviction vitiated the Nixons' notice argument).

The *Nixon* case may not be over. Recent press accounts suggest that the Nixons may ask the Pennsylvania Supreme Court to review their conviction. And whatever happens to the Nixons, the Pennsylvania legislature has considerable latitude to redraw the line between the state's duty to protect the vulnerable and its duty to preserve religious liberty.

References

1. *Pennsylvania v. Nixon*, 1998 WL 640425 (Pa Super).
2. *Prince v. Massachusetts*, 321 US 158 (1944).
3. CPSA, 23 Pa C.S.A. S6311.
4. Seth M. Asser and Rita Swan, "Child Fatalities From Religion-Motivated Neglect," *Pediatrics* 101 (1998): 625-29.